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Rights of internally displaced persons

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, submitted in accordance with General Assembly resolution 72/182 and Human Rights Council resolution 32/11.

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Report of the Special Rapporteur on the human rights of internally displaced persons

Summary

The present report outlines the main activities undertaken by the Special Rapporteur on the human rights of internally displaced persons since her previous report to the General Assembly.

In the thematic section, the Special Rapporteur addresses the increasing need to identify and examine ways in which transitional justice measures and practitioners can better perform their work in the context of internal displacement, engage with internally displaced persons and respond to their justice claims. The Special Rapporteur will also provide recommendations for addressing the challenges in including internally displaced persons in transitional justice processes and for practitioners, researchers and policymakers from both fields to collaborate with each other. The report is therefore intended to serve as a stocktaking/guidance tool with the objective of operationalizing existing frameworks and guidelines and providing technical assistance for their implementation by all stakeholders to ensure that transitional justice measures are an inherent part of durable solutions for internally displaced persons.

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, pursuant to General Assembly resolution 72/182.

2. Section II provides an overview of the main activities undertaken by the Special Rapporteur in the period from August 2017 to July 2018. Section III focuses on transitional justice in the context of internal displacement and addresses measures and positive practices to ensure the inclusion of internally displaced persons in transitional justice processes as part of durable solutions. Section IV provides conclusions and key recommendations.

II. Mandate and activities of the Special Rapporteur

A. Mandate

3. The Human Rights Council, in its resolution 32/11, mandated the Special Rapporteur to address the complex problem of internal displacement, in particular by engaging in coordinated international advocacy and action for improving the protection of and respect for the human rights of internally displaced persons; continuing and enhancing dialogue with Governments, intergovernmental, regional and non-governmental organizations and other relevant actors; working towards strengthening the international response to internal displacement; and mainstreaming the human rights of internally displaced persons into all relevant parts of the United Nations system.

B. Activities of the Special Rapporteur

4. In June 2018, the Special Rapporteur presented her annual report (A/HRC/38/39) to the Human Rights Council. The report focused on the twentieth anniversary of the Guiding Principles on Internal Displacement in 2018. Addenda to the annual report included the country visit reports of the Special Rapporteur to El Salvador (A/HRC/38/39/Add.1), Libya (A/HRC/38/39/Add.2) and Niger (A/HRC/38/39/Add.3).

5. The Special Rapporteur organized a stakeholder meeting in Geneva on 25 September 2017 using the opportunity provided by the twentieth anniversary of the Guiding Principles in 2018 to forge a stronger commitment and promote more strategic and coordinated action among all stakeholders. That meeting, together with other consultations with partners at the national, regional and international levels, resulted in an agreement to develop a plan of action for advancing prevention, protection and solutions for internally displaced persons.[1]

6. The Special Rapporteur continued to support the mainstreaming of the human rights of internally displaced persons within the United Nations system and the wider humanitarian community. Her participation in the Inter-Agency Standing Committee at the principals' level has proved essential in that regard, as it helps to ensure and enhance collaborative approaches and strong links with key United Nations agencies, other international organizations and civil society. The Special Rapporteur participated in the Principals' meetings of the Committee in October 2017 and May 2018, and participated remotely in the meeting of the Committee Working Group and Emergency Directors Group in April 2018.

[1] See www.ohchr.org/EN/Issues/IDPersons/Pages/MultiStakeholderPlanOfAction.aspx.

7. The Special Rapporteur co-hosted, with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Institute of Humanitarian Law, the thirteenth and fourteenth courses on the law of internal displacement, held in October 2017 and June 2018 respectively, in San Remo, Italy. The course continues to be an excellent opportunity to bring together government authorities involved in the protection of internally displaced persons, and the Special Rapporteur intends to continue it as the mandate holder's flagship course.

8. The Special Rapporteur organized jointly, with the Swiss Peace Foundation and the University of Basel, an expert workshop on transitional justice and internal displacement in December 2017, which brought together scholars and practitioners working on internal displacement and transitional justice. Participants discussed the current state of knowledge and identified lessons learned, best practices and recommendations for improving policies and practices in this field. It served as a platform for dialogue between the expert participants and the Special Rapporteur on her thematic priority of inclusion of internally displaced persons in transitional justice processes. The findings from the workshop have directly informed the present report.

9. Aside from participating in several forums and conferences organized by and focused on the role of national human rights institutions,[2] the Special Rapporteur further strengthened her engagement with such institutions by attending the annual conference of the Global Alliance of National Human Rights Institutions in February 2018, at which she organized a side event examining the work of national human rights institutions on the Guiding Principles and proposing how the scope of that work could be expanded. In addition, a consultative workshop was co-convened with UNHCR, the Global Alliance and the Office of the United Nations High Commissioner for Human Rights (OHCHR) on 20 February 2018, to which selected national human rights institutions were invited, to exchange views and ideas on their existing and potential roles in addressing internal displacement. The Special Rapporteur sent a questionnaire to all national human rights institutions, to map their ongoing work on internal displacement and identify good practices and opportunities. That information will inform her annual report to the Human Rights Council in 2019, on the role of national human rights institutions in promoting and protecting the human rights of internally displaced persons.

10. The Rapporteur further continued her engagement with supporting States and other relevant stakeholders, so as to include internally displaced persons in the broader discussions on migration and, in particular, the negotiations on the global compact for safe, orderly and regular migration. She sent out an open letter to permanent missions in Geneva and New York in March 2018 on the inclusion of internally displaced persons in the global compact, in line with the New York Declaration for Refugees and Migrants.[3] The Special Rapporteur was also one of the 19 special procedures co-signatories in the joint letter sent to all Permanent Missions and co-facilitators regarding the second draft of the Global Compact for Safe, Orderly and Regular Migration.

11. The Special Rapporteur has also been an active member of the Expert Group on Refugee and Internally Displaced Persons Statistics, contributing to the technical

[2] In November 2017 and April 2018, respectively, the Special Rapporteur participated in the twenty-second annual meeting of the Asia-Pacific Forum of National Human Rights Institutions, held in Bangkok, and a meeting of the European Network of National Human Rights Institutions, held in Kiev, to discuss the roles of national human rights institutions in the context of their regions, as well as to brainstorm on the commemoration and plan of action for the twentieth anniversary of the Guiding Principles on Internal Displacement.

[3] General Assembly resolution 71/1.

report on internally displaced persons statistics, which was adopted by the Statistical Commission at its forty-ninth session in March 2018.

12. On 16 April 2017, at a meeting in Geneva, the Special Rapporteur launched the Durable Solutions Indicator Library[4] and Analysis Guide,[5] representing significant milestones in addressing the challenge of acquiring the necessary evidence to support durable solutions to internal displacement. The Library and Guide were developed as a result of a multi-stakeholder three-year initiative entitled "Informing responses to support durable solutions for internally displaced persons", led by the Special Rapporteur and coordinated by the Joint Internally Displaced Person Profiling Service.

13. To mark the twentieth anniversary of the Guiding Principles on Internal Displacement, the multi-stakeholder Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced Persons 2018–2020,[6] the first ever, was launched during a stakeholder meeting for the twentieth anniversary in Geneva on 17 April 2018, sponsored by Austria, Honduras and Uganda. The Plan of Action was drafted under the leadership of the Special Rapporteur, UNHCR and the Office for the Coordination of Humanitarian Affairs in consultation with various other agencies and partners. The Plan of Action seeks to galvanize a strategic dialogue, concerted action and adequate resources to prevent, respond to and resolve internal displacement, underpinned by strategic and coordinated multi-stakeholder engagement. A mapping of planned activities and initiatives supporting the four identified priority areas at the local, national, regional and international levels has been undertaken, while a steering group has been created to oversee the implementation and monitor progress of the three-year Plan of Action.

14. From 23 to 25 April 2018, the Special Rapporteur met for the first time her counterparts at the Council of Europe in Strasbourg, France, with a view to strengthening collaboration with the Council. The visit was also an opportunity for the Special Rapporteur to exchange views with the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council, participate in a side event on internal displacement on the role of parliamentarians and deliver a statement at the Assembly during its debate on the humanitarian needs and rights of internally displaced persons.

15. On 26 and 27 April 2018, during a visit to Kiev, the Special Rapporteur met with the Ombudsperson of Ukraine and with United Nations agencies (UNHCR, the Office for the Coordination of Humanitarian Affairs, the United Nations Development Programme and the human rights monitoring mission in Ukraine) to follow up on specific issues regarding internal displacement in Ukraine.[7]

16. In May, the Special Rapporteur travelled to Washington, D.C., where she gave an overview on the Guiding Principles and their implementation at a symposium on internal displacement, and participated in a strategy meeting on internally displaced persons organized by the Institute for the Study of International Migration of Georgetown University and the Exodus Institute, held on 22 May. The Special Rapporteur also exchanged thoughts on her priorities as mandate-holder with international non-governmental organizations at a meeting organized by InterAction

[4] See https://inform-durablesolutions-idp.org/.

[5] https://inform-durablesolutions-idp.org/wp-content/uploads/2018/01/Durable-Solutions-Analysis-Guide-Apr2018.pdf.

[6] The Plan of Action was presented on 17 April 2018; see www.ohchr.org/Documents/Issues/IDPersons/GP20PlanOfAction.pdf.

[7] See report of the previous Special Rapporteur's visit to Ukraine in 2014 (A/HRC/29/34/Add.3).

and with counterparts from the United States Agency for International Development, and at a special lunch meeting with World Bank staff in Washington, D.C.

17. On 1 June, the Special Rapporteur gave a key address at a lunch meeting in New York for interested Member States on the Plan of Action, organized by the Permanent Mission of Austria to the United Nations in New York. On 6 June, the Special Rapporteur participated in a humanitarian coordinators' retreat, organized by the Office for the Coordination of Humanitarian Affairs in Lausanne to discuss how the Sustainable Development Goals represent an opportunity to reframe interventions aimed at addressing the vulnerabilities of internally displaced persons. She gave a presentation on how the Plan of Action can be leveraged to step up responses to internal displacement situations at the national level and the need for renewed engagements and innovative partnerships with local actors and civil society.

18. Pursuant to a Human Rights Council decision (A/HRC/DEC/35/101) to commemorate the twentieth anniversary of the Guiding Principles, the first-ever panel discussion on the achievements, best practices, challenges and recommendations with regard to applying the Guiding Principles was held on 26 June at the thirty-eighth session of the Human Rights Council. The panel was moderated by the Special Rapporteur, who also highlighted the importance of seizing the opportunity of the twentieth anniversary to galvanize efforts. Member States emphasized the importance of the Guiding Principles and national responsibility for internal displacement and offered support and to share lessons learned. The Plan of Action was mentioned multiple times by States taking the floor as a useful framework for increasing momentum on addressing internal displacement.

19. On June 27, during the thirty-eighth session of the Human Rights Council, the Special Rapporteur organized a well-attended and commended side event entitled "In their own words" to bring forward the voices of internally displaced persons themselves in the form of a panel consisting of internally displaced persons from Mexico, Nigeria, Japan and South Sudan. The side event was co-hosted by the permanent missions of Austria, Honduras and Uganda, with the support of OHCHR, UNHCR, Christian Aid and Greenpeace. On 29 June, during the UNHCR annual consultations with non-governmental organizations, the Special Rapporteur co-led a panel highlighting the need for a participation revolution, in line with her report to the General Assembly in 2017 on the topic, with internally displaced persons on the panel.

20. On 17 July, the Special Rapporteur provided remarks on the importance for countries with internally displaced persons of including internally displaced persons in their national road maps for the Sustainable Development Goals at a meeting organized by the International Peace Institute and the Permanent Mission of Norway to the United Nations in New York.

21. The Special Rapporteur also supported the organization of and participated as a keynote speaker at a workshop on 20 July, during the annual conference of the Refugee Law Initiative in London, entitled "Revitalizing IDP research". The Special Rapporteur shared her thoughts on how research can support the Plan of Action and discussed how best to frame policy-relevant research on internally displaced persons. During her visit to London, the Special Rapporteur also met with relevant counterparts in the Government of the United Kingdom of Great Britain and Northern Ireland and with non-governmental organizations, to promote and discuss the Plan of Action.

22. The Special Rapporteur also continued to co-chair the task team on law and policy of the Global Protection Cluster, aimed at supporting capacity-building and providing technical advice to States that are in the process of developing such normative instruments.

23. The Special Rapporteur took part in person and remotely in a number of international and regional conferences and events, including a workshop of the Advisory Committee of the Platform on Disaster Displacement in Bogis-Bossey, Switzerland in October 2017; a conference on the gender dimensions of internal displacement organized by the chairmanship of the Organization for Security and Cooperation in Europe in Vienna in June 2017; a summit of the Association of Southeast Asian Nations on Security Council resolution 1325 (2000), women and internally displaced persons in Manila in November 2017; a Global Protection Cluster thematic round table on internally displaced person participation in peace processes, held in Kiev in May 2018; and a round-table meeting on data of the Office for the Coordination of Humanitarian Affairs-Internal Displacement Monitoring Centre in The Hague, the Netherlands, in June 2018. The Special Rapporteur also continued to participate as a speaker and facilitator at events related to relevant policy research and studies, including a special internally displaced person research workshop of the Refugee Law Initiative, held in London in July 2018.

C. Country visits

24. Since her previous report to the General Assembly, the Special Rapporteur has undertaken official country visits to El Salvador, Libya and Niger. The findings and recommendations of her missions can be found in the addenda to the thematic report submitted to the Human Rights Council in June 2018 (A/HRC/38/39/Add.1, A/HRC/38/39/Add.2 and A/HRC/38/39/Add.3). In addition, the Special Rapporteur undertook working visits to Guatemala (19–22 August 2017), Mexico (23–25 August 2017), Honduras (25–28 October 2017) and Colombia (26 February–1 March 2018).

III. Internal displacement and transitional justice: ensuring the inclusion of internally displaced persons in the transitional justice process

A. Introduction

25. Transitional justice constitutes a response to the legacies of serious human rights and international humanitarian law violations, and more guidance is therefore needed regarding the role of Governments, United Nations agencies, non-governmental organizations and internally displaced persons themselves in achieving accountability for past injustices specifically related to internal displacement. These include the injustice of the detriment which internal displacement represents in its own right, as well as human rights violations that occur prior to, during or after the displacement, such as the destruction of homes, the killing of family members or discrimination. Seeking to strengthen the interlinkages between internal displacement and transitional justice and to address specific transitional justice responses to internal displacement is particularly pertinent at the present time since internal displacement caused by human rights violations, international humanitarian law violations and conflicts have significantly increased over the past two decades, with an estimated 40 million internally displaced persons globally at the end of 2017.[8] The increasingly protracted nature of internal displacement, with average displacement lasting 20 years,[9] has also

[8] See UNHCR, "Global trends: forced displacement in 2017" (2018). Available from www.unhcr.org/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html.

[9] Office for the Coordination of Humanitarian Affairs, synthesis report of the humanitarian affairs segment of the 2017 session of the Economic and Social Council (June 2017). Available from www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2017doc/2017-ecosoc-has-synthesis.pdf.

prompted greater attention to the need for peacebuilding initiatives and development support to durable solutions for internally displaced persons, in addition to effective humanitarian responses.

26. Transitional justice[10] refers to the approach of countries emerging from periods of conflict and repression to address systematic or widespread human rights violations so numerous and so serious that the normal justice system cannot, or will not, be able to provide an adequate response. It seeks recognition for victims and the promotion of possibilities for peace, justice and reconciliation. Transitional justice in the context of displacement is not a special form of justice, but justice adapted to countries or communities transforming themselves after a period of internal displacement.

27. Forced displacement is explicitly prohibited, per se, under international humanitarian law[11] in the form of the deportation or transfer of parts of a State's own civilian population into occupied territories, which qualifies as a war crime,[12] or as a crime against humanity, in certain circumstances.[13] Displacement can also be a consequence of other international humanitarian law violations. Certain violations often trigger displacement, such as mass killings, persecution, arbitrary arrests, torture or sexual violence. Other violations are deliberate attempts to prevent the possibility of certain groups returning home, through the destruction of housing and property.[14] In addition, displacement leaves its victims vulnerable to other violations, as they have lost the protection provided by their homes, communities and livelihoods.

28. There is therefore no doubt that transitional justice initiatives and responses are acutely relevant to internal displacement, given the wide range of human rights and international humanitarian law violations which prompt, surround and maintain such displacement.

29. Recognizing the important work undertaken to date in the field of transitional justice in the context of internal displacement,[15] and with the objective of

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[10] In the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616, para. 8), transitional justice is defined as the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.

[11] See Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), a.ts. 49 and 147; Additional Protocol I, art. 85 (4) (a); Additional Protocol II, art. 17; and International Committee of the Red Cross, customary international humanitarian law rule 129. See also Additional Protocol I, arts. 51 (7) and 78 (1), and Additional Protocol II, art. 4 (3) (e)).

[12] Fourth Geneva Convention, art. 49; Additional Protocol I, art. 85 (4) (a); Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii); see also International Committee of the Red Cross (ICRC), customary rules of international humanitarian law, rule 130; Statute of the International Tribunal for the Former Yugoslavia, art. 2 (g).

[13] Rome Statute, art. 7 (1) (d).

[14] Under international humanitarian law, internally displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist (Fourth Geneva Convention, art. 49, and customary international humanitarian law rule 132).

[15] Most notably, the collaborative research and case studies conducted by the International Center for Transitional Justice and the Brookings-LSE Project on Internal Displacement between 2010 and 2012 on the way in which transitional justice can respond to the injustices of displacement and serve as part of a comprehensive approach to resolving displacement. The project resulted in a final report containing 8 thematic studies and 14 case studies on country experiences.

operationalizing existing resources[16] and providing technical assistance for their implementation, the Special Rapporteur has sought to collaborate with relevant States, United Nations bodies and other international organizations, non-governmental organizations, researchers and academia and national human rights institutions to address this important area of concern and reconceive internally displaced persons as transitional justice actors.[17] She will continue to engage in dialogue with Governments undergoing transitional justice and peace processes to promote the inclusion of internally displaced persons and to learn about those Governments' experiences, challenges and practices.

30. It should be noted that, while transitional justice measures and approaches in disaster and post-disaster environments, and even development-related displacement[18] characterized by massive human rights violations, also deserves more attention in relation to internal displacement, the present report will focus on contexts of conflict.[19]

B. Normative frameworks and the relevance of transitional justice in the context of internal displacement

31. The Guiding Principles are recognized as the international framework for the promotion and protection of the human rights of internally displaced persons. In Africa, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), together with other normative frameworks, provides comprehensive guidance for States and relevant stakeholders in relation to internal displacement.

32. Common to these normative frameworks are the three "stages" of displacement and relevant obligations, namely (a) protection from forced and arbitrary internal displacement, (b) protection and promotion of human rights during internal displacement and (c) durable solutions for internally displaced persons. Much attention is given in times of crisis to protection during internal displacement. However, in the light of the increasing number of internally displaced persons worldwide, and the duration of displacement, it is critical to pay greater attention to preventing and resolving internal displacement.

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[16] A number of analytical studies have been undertaken by the Office of the United Nations High Commissioner for Human Rights, including on transitional justice aspects of peace agreements (A/HRC/12/18), the relationship between transitional justice and disarmament, demobilization and reintegration (A/HRC/18/23), gender-based and sexual violence in relation to transitional justice (A/HRC/27/21) and on the right to truth (E/CN.4/2006/91). OHCHR also led the development of the guidance notes of the Secretary-General on the United Nations approach to transitional justice (2010) and on reparations for conflict-related sexual violence (2014).

[17] Susan Harris Rimmer, "Reconceiving refugees and internally displaced persons as transitional justice actors", New issues in refugee research, research paper No. 187 (Geneva, 2010).

[18] There is growing interest in accountability for harms associated with disasters in various recent laws and policies, although these injustices have so far been overlooked. The Kampala Convention addresses natural disasters as a driver of forced displacement (art. 12 (3)) and standards such as the principles on housing and property restitution for refugees and displaced persons and the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons confirm that the resolution of issues of internal displacement as caused by natural disasters requires redress, in particular in the form of property restitution or compensation.

[19] See Megan Bradley, "More than Misfortune: Recognizing Natural Disasters as a Concern for Transitional Justice", International Journal of Transitional Justice, vol. 11, No. 3 (2017), pp. 400–420.

33. To achieve this, the four pillars of transitional justice are particularly relevant.[20] Outlined as the right to truth, the right to justice, the right to reparation and guarantees of non-recurrence,[21] they are referred to explicitly in the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons. Of the four, the right to truth, the right to justice and guarantees of non-recurrence act both as a deterrent to future forced displacement and as active steps towards strengthening legal protection against displacement, while the right to reparation and the right to justice can directly contribute to addressing the obstacles to durable solutions, for example through the restitution of housing, land and property, and reparation for underlying violations in addition to criminal prosecution of perpetrators.

34. Addressing housing, land and property disputes is an essential aspect of a response to the justice concerns of internally displaced persons and is also the most politically charged topic, requiring immense context sensitivity. Situations of ongoing and protracted internal displacement have in many countries resulted in complex and overlapping claims to land and property, and dealing with these can lead to renewed tensions, in particular when conflicts are ongoing or peace is fragile. Failing to address housing, land and property issues may however lead to further conflict and displacement, as these injustices are often linked to the effects of discrimination and marginalization. In order to settle such cases effectively, it is vital to address them promptly and transparently and with political strategies that ensure unbiased responses to claims by different groups. Special attention should be paid towards those groups which have previously been denied property rights owing to discrimination, in order to avoid reinforcing this marginalization, and steps should be taken to include them on an equal basis in restitution processes.[22] In the case of the Philippines, the Transitional Justice and Reconciliation Commission acknowledged that grievances about land dispossession are part of the historical injustices that led to the conflict and are therefore the subject of reparation and restitution.

35. Land issues following displacement can also have a considerable impact on gender equity and the socioeconomic well-being of internally displaced women. In countries emerging from large-scale displacement crises, women often lack formal title to the lands that they inhabited and have less power than men under customary or formal land ownership. Land restitution programmes that simply restore pre-displacement land ownership practices and overlook women's claims can be detrimental to the needs and concerns of internally displaced women.

36. New governments replacing repressive regimes may introduce and support different types of justice policies for mass atrocities, although internal displacement has rarely been acknowledged in these contexts. In some countries, the scale of the displacement is clear but opportunities for initiating transitional justice processes are more limited, owing to the conflict being ongoing.

37. Practical difficulties and challenges also arise from attempting to provide justice for the internal displacement of persons within a country, which sometimes has been caused by the authorities themselves. A country's political balance may be fragile,

[20] See E/CN.4/2005/102/Add.1, report of the independent expert appointed to update the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

[21] See the 2015 reports of the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, on the pillar of non-recurrence (A/HRC/30/42, a general report on non-recurrence and A/70/438, a specific report on security sector reform and vetting).

[22] See Scott Leckie, "Housing, land and property rights in post-conflict societies: proposals for a new United Nations institutional and policy framework", Legal and Protection Policy Research Series (Geneva, UNHCR, 2005); and Khaled Hassine and Scott Leckie, *The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons: A Commentary*, International Studies in Human Rights (Brill, 2016).

and a Government may be unwilling to pursue wide-ranging and costly initiatives or it may be unable to do so without putting its own stability at risk. Moreover, parties involved in the displacement with something to fear from justice may still control some or most of the levers of power and the distribution of power will therefore determine much of what can be done.

C. Transitional justice and prevention of internal displacement

38. One significant provision of the Guiding Principles is the recognition of the right not to be arbitrarily displaced, which creates a duty for States to ensure that such displacement is prevented. One way to reduce the risk of future displacement is by undertaking the transitional justice actions set out below, which can help strengthen the rule of law and accountability.

(a) **Criminal accountability and prosecutions** can be applied to internal displacement by targeting the perpetrators of violations that have led to arbitrary displacement or by targeting arbitrary displacement as a crime in itself.[23] The criminalization of arbitrary displacement in criminal codes would be a first step, although the lack of experience of judges and prosecutors within this field should be borne in mind. As a tool, it should be seen both as a component of the right to justice and a critical component in the prevention of future internal displacement. Displacement should in this sense be seen as itself a violation of international human rights law and international humanitarian law. International legal frameworks, such as the statutes of the International Criminal Tribunal for the former Yugoslavia, Extraordinary Chambers in the Courts of Cambodia (more commonly known as the Khmer Rouge tribunal, which, in case 002/1, examined the forced transfer of populations in the 1970s), the International Criminal Court, and the Geneva Conventions, allows for prosecution for forced displacements where they qualify as war crimes or crimes against humanity.[24,25] Some States, such as Colombia and the Philippines, have prosecuted the crime at the national level. The example of Colombia is important, as it has one of the most comprehensive framework programmes owing to the fact that displacement is considered to be a human rights violation and is defined as a crime under the Colombian Penal Code.[26] In 2011, the Victims and Land Restitution Act, which includes provisions on internally displaced persons, was launched. This significantly inflated the number of victims, with approximately 80 per cent of internally displaced persons having registered to receive reparations on account of being displaced.

(b) **Truth-seeking** (or fact-finding) initiatives by non-judicial actors that investigate, report and officially acknowledge periods or patterns of past human rights violations can be applied to internal displacement through truth commissions that increasingly recognize and investigate displacement as a serious human rights issue. The form and methodology can vary, but the processes should always be explicitly

[23] In order for forced displacement to be considered a crime, it has to be "arbitrary displacement", meaning that it has to have been ordered or committed without grounds permitted under international humanitarian law, such as involving the security of civilians or evacuation required for imperative military reasons.

[24] International Center for Transitional Justice Research Unit, "Transitional justice and displacement: challenges and recommendations", Project on Internal Displacement, International Center for Transitional Justice and Brookings-LSE (June 2012).

[25] The prohibition of displacing the civilian population in non-international armed conflicts is set forth in article 17 of Additional Protocol II to the Geneva Conventions and under article 8 (2) of the Rome Statute.

[26] See Inter-Agency Standing Committee, Framework on Durable Solutions for Internally Displaced Persons, p. 44, where the Colombian Penal Code is cited as good practice.

mandated to address both the causes and consequences of displacement, so that such experiences are adequately reflected in the recommendations of truth commissions. In Timor-Leste this helped ensure that displacement as a human rights violation was concertedly investigated and addressed in the report of the Truth, Reception and Reconciliation Commission. Such bodies should consider convening meetings specifically focused on internal displacement in order to deepen the understanding of the associated violations and to increase engagement with internally displaced persons. Truth commissions such as those in Liberia, Sierra Leone, Timor-Leste and Guatemala have specifically examined the role of displacement in conflict and occupation, as well as the suffering and stigma endured by those displaced.[27] The Truth, Justice and Reconciliation Commission of Kenya presented its report to the Kenyan Parliament in May 2013,[28] which provides a vital foundation for examining the past and, importantly, contains a variety of useful recommendations, including several on internal displacement.[29] The recent efforts of Kenya in the setting up of programmes building on the outcomes of the report should be supported.

(c) **Justice-sensitive security sector reform** seeks to reform laws and institutions, including the police, the military and the judiciary, responsible for past violations, by building institutional accountability, legitimacy, integrity and the empowerment of citizens. This can also be seen as constituting measures of non-repetition and can be used as a way to prevent future displacement by transforming the security and justice institutions and the governance systems that control and oversee them and by investing in national laws and policies on internal displacement. For example, in Bosnia and Herzegovina and in Kosovo,[30] reform processes seeking to remove perpetrators of human rights violations from the police force were harmonized with efforts to recruit from underrepresented minority groups and thereby concretely contributed to enabling returns of internally displaced persons.[31]

IV. Transitional justice in support of durable solutions

39. According to the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons, a durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. It can be achieved either through sustainable reintegration at the place of origin (return); through sustainable local integration in areas where internally displaced persons take refuge (local integration); or through sustainable integration in another part of the country (settlement elsewhere in the country).

40. Transitional justice measures should be an inherent part of durable solutions for internally displaced persons. Conversely, any sustainable transitional justice initiative in countries affected by internal displacement will be meaningful only if, and to the extent to which it devotes sufficient inclusion, to the issue of internal displacement and includes internally displaced persons in the crafting of reparations programmes, in particular. The Inter-Agency Standing Committee Framework devotes considerable

[27] Ibid.

[28] Kenya Transitional Justice Network, "Summary: Truth, Justice and Reconciliation Commission Report". Available from www.acordinternational.org/silo/files/kenya-tjrc-summary-report-aug-2013.pdf.

[29] Ibid., p. 43.

[30] All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

[31] See International Center for Transitional Justice Research Unit, "Transitional Justice and Displacement: challenges and recommendations" (see footnote 24).

attention to the issue of reconciliation and recognizes the right to reparation, justice, truth and closure for past injustices through transitional justice or other appropriate measures and that internally displaced persons who have been victims of violations of international human rights or humanitarian law, including forced and arbitrary displacement, must have full and non-discriminatory access to effective remedies and access to justice.[32]

41. Both the 2004 and 2011 reports of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies stress the significance of comprehensive rule of law and transitional justice programmes that pay special attention to abuses committed against groups most affected by conflict, such as [...] displaced persons and refugees, and establish particular measures for their protection and redress in judicial and reconciliation processes and ensure the full inclusiveness of marginalized populations, including displaced persons.[33]

42. Particularly relevant to helping internally displaced persons reach durable solutions are reparations and restitution programmes, aimed at overcoming the material obstacles that internally displaced persons typically face as a result of their displacement, but also underlining the psychological impact that it can have. As stated by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide: first, effective redress is a right. Legally, lack of redress is a violation in its own right, a "denial of justice". Morally, redress recognizes the suffering of the victims and their families and contributes to restoring (to some extent) their dignity. Practically, redress is important from a preventive perspective, given the patterns of violations.[34] Together with truth-seeking and criminal accountability, as outlined above, security sector reform should also be seen as a confidence-building measure which can be a critical component to enabling internally displaced persons to achieve durable solutions.

- **Reparation programmes**[35] for human rights violations can take various forms, such as individual, collective, material and symbolic benefits for victims, such as compensations and apologies. An element of reparations is restitution, which seeks to restore victims to their previous situations. Returning housing, land and property to those who have been driven out are the types of reparations most directly linked to internal displacement. It is important to consult and utilize the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons[36] in respect of any restitution programmes, as they clearly define how best to use housing and property restitution as a core remedy for displacement. In the context of internal displacement, programmes could provide benefits to victims of abuses that led to displacement, to displaced persons for harms that they suffered while displaced or for the experience of displacement itself. Benefits can include access to higher education, livelihood support and cash grants, although it may not always be appropriate or viable to provide financial compensation for the displacement itself. Monetary

[32] Ibid, p. 6.

[33] See S/2004/616, para. 25, and S/2011/634, para. 21.

[34] See A/HRC/37/65, para. 9.

[35] The right to reparations is recognized in General Assembly resolution 60/147 and the annex thereto, containing the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[36] E/CN.4/Sub.2/2005/17. See also Parliamentary Assembly of the Council of Europe, resolution 1708 (2010) and recommendation 1901 (2010) on solving property issues of refugees and internally displaced persons, which endorses the United Nations Principles and sets out a series of Europe-specific restitution principles recommended to Council of Europe member States.

compensation can moreover be hard to sustain in countries that have experienced massive displacement. Symbolic reparations may instead be appropriate. Collective reparations intended for displaced communities as a whole may provide far-reaching benefits that go beyond the level of the individuals and the family unit. They may take the form of community rehabilitation programmes, such as the building of relevant infrastructure; collective educational programmes for those returning and their children; and health and psychological services for those who have suffered trauma from the displacement and consequent human rights violations.

E. Achieving a comprehensive transitional justice approach in responding to internal displacement

43. The Special Rapporteur points out that there are several important issues to bear in mind when approaching transitional justice in the context of internal displacement and identifying which methods will increase the chances of meeting the objectives of transitional justice. For international actors, this can include taking the necessary time to carry out comprehensive analyses of the political, social and legal conditions in the country in order to ensure context-driven approaches.

44. A gendered approach should also be applied, which requires exploring how women and men experience human rights violations differently leading up to, during and following displacement.[37,38] The pursuit of gendered justice includes prosecutions for gender-based violence; reparations delivery to diverse groups of women and their families; and institutional reform that serves human security needs and promotes women's access to justice. A gendered perspective is important to ensure that transitional justice mechanisms respond to the often marginalized concerns of internally displaced women. These include specific housing, land and property issues as, in many contexts, women and girls generally do not inherit property, as it passes through their husbands and fathers, and which in displacement situations is a major problem, as many men are killed or disappear. The socioeconomic repercussions of conflict and displacement on internally displaced women merit the attention of transitional justice processes. While displaced, many internally displaced persons are, moreover, exposed to a heightened risk of sexual and gender-based violence, and efforts to redress such violations should therefore be carefully incorporated into transitional justice programmes, while recognizing that men and boys may also be subjected to such abuse. In the same vein, it is crucial that any legislation or other transitional justice instrument or policy does not contravene or diminish available protection afforded to women, including through the criminalization of gender-based violence and discrimination. There has, to some extent, been a mainstreaming of women's experiences by truth commissions, with countries such as Liberia, Peru and Sierra Leone holding hearings with a specific focus on women, and this increasing recognition of both internally displaced persons and women in truth commissions should be supported.

45. A transitional justice approach, in responding to internal displacement, should also take into account the particular situation of those internally displaced persons who have a missing relative and thus experience incremental vulnerability. The anguish of not knowing what happened to their loved ones and the uncertainty of their

[37] See S/2011/634, para. 22: "Since 2004, women and girls have increasingly participated in transitional justice processes and have highlighted the grave consequences of forced displacement".

[38] Lucy Hovil, "The nexus between displacement and transitional justice: a gender-justice dimension", Project on Internal Displacement, International Center for Transitional Justice/ Brookings Project (June 2013).

ambiguous loss compound the suffering related to the trauma of displacement and the uncertainty about their own fate, especially when their displacement becomes protracted. Furthermore, they can face additional administrative burdens in relation to the search process, such as lacking the necessary official documentation, or the procedure may need to be initiated at the place of origin, to which the internally displaced persons may not be able to return without putting their safety at risk. Failure to address this issue may negatively impact on the internally displaced persons' ability to establish as normal a life as possible in the new location and move forward towards a durable solution. It may even lead to further tensions and repeated displacement.

46. Ensuring appropriate and contextualized approaches to the handling of claims by internally displaced persons will require engagement with informal or customary justice and security mechanisms, especially in countries where customary law and legal systems often provide the only available form of justice for a large group of the population and therefore play a pivotal role in resolving grievances. Afghanistan is a valid example of how the provision of legal aid by international actors can help returning internally displaced persons use customary institutions to effectively resolve property claims. While formal, high-level accountability efforts are essential to acknowledging violations, combating impunity and reforming national political cultures, it is important not to assume that high-level transitional justice initiatives will result in positive reconciliatory effects trickling down to the local level. Informal or customary processes therefore need to be adapted and applied to promote justice, reconciliation and the peaceful reintegration of internally displaced persons, while taking into account the limitations of such approaches. The traditional or religious beliefs and values that often underpin such approaches may not always be shared by the entirety of the affected population and can even conflict with human rights norms on issues such as gender equality.[39]

47. Transitional justice practitioners have in some places, for example in Burundi and Northern Uganda, engaged with local, or "traditional", justice measures where communities wished to use traditional rituals to foster reconciliation of opposing parties in conflict. In such cases, the role of transitional justice should be to ensure that a holistic approach is taken, whereby the ritual is included, but does not exclude the possibility of using other transitional justice measures.

48. In all contexts, in order to guarantee robust transitional justice initiatives, these need to involve the participation of internally displaced persons from the design to the implementation phase and should be rooted in the fundamental principle of non-derogation, or renunciation of existing rights, in particular non-discrimination guarantees protecting, inter alia, the rights of women, children, indigenous communities, ethnic and other minorities and persons with disabilities. Effective coordination of partnerships across sectors and areas of expertise is also crucial, together with proactive investment in national and local structures, laws, policies and capacity.

F. Participation of internally displaced persons in transitional justice processes

49. Appropriate consultation and participation is needed in order for transitional justice approaches to take the views, needs and objectives of internally displaced persons fully into account. Ensuring that internally displaced persons are included at the outset in the design and planning, to the extent possible, and in the implementation of transitional justice measures directed towards them must be at the core of

[39] Bradley, "More than misfortune" (see footnote 19).

transitional justice processes. The enjoyment of human rights by internally displaced persons and progress towards durable solutions rest upon the fundamental principle that internally displaced persons have the right to be involved in decisions affecting them.

50. That observation reflects the increasing recognition in the field of transitional justice of the need for inclusion and consultation of victims and the broader population.[40] The need, in designing responses to internal displacement, and in particular appropriate restitution, compensation or other forms of reparation for internally displaced persons, to consult the people most affected was also a recommendation of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, in his 2006 report on his mission to Côte d'Ivoire.[41] Moreover, as observed in the report of the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on national consultations for transitional justice, internally displaced persons should be consulted not only on the topic of addressing internal displacement, but about other aspects of their victimization or other violations which they have suffered in order to provide recognition of their equal status as rights holders.[42]

51. Internally displaced persons often face significant obstacles to participating in or accessing transitional justice measures. In some cases, information about transitional justice measures is not available to internally displaced persons, which can prevent them from making claims and may affect their decisions on whether to attempt to return, integrate locally or settle elsewhere. It is therefore important to ensure that transitional measures are enabled in places where the internally displaced persons themselves are located and that information for them is accessible in their languages.

52. Internally displaced or formerly internally displaced persons may also face significant challenges to participating in or accessing transitional justice programmes owing to lack of information, identity documentation requirements, difficulty in travelling and engaging due to economic constraints, marginalization and physical inaccessibility and the fear of reprisals.

53. Internally displaced populations also often face significant material and logistical challenges, such as a lack of human and financial resources and weak levels of coordination, which pose significant barriers to their mobilization. Colombia is a good example of a State which has made efforts to set up technical and administrative tools for the acknowledgement and characterization of the victims of armed conflict and displacement in order to better organize the State response. This was done though the establishment of the Victim Assistance and Comprehensive Reparation in 2011 by Law 1148, which furthermore created a collective reparations programme to ensure that affected groups would have access to comprehensive reparations.

54. It is very important to stress that the individual, as opposed to the collective nature of the measures envisaged under transitional justice measures will be contingent upon the specific context. Nonetheless, and while displacement is often perceived as a collective phenomenon and responses may rightly be framed collectively as far as they concern a group sharing common entitlements and identity features, this does not obviate the fact that internally displaced persons should be entitled to individual remedial measures in justice initiatives.

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[40] See, for example, the report of the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on victim participation (A/HRC/34/62).

[41] A/HRC/4/38/Add.2.

[42] A/71/567, para. 24.

55. Internally displaced persons, as critical stakeholders, provide the State with the opportunity to recognize them not only as nationals of the country with an equal stake in the body politic but also as the country's human resources for attaining long-term stability, reconciliation and development. Not doing so would further marginalize displaced populations, perpetuate instability and recurrence of conflicts and, moreover, "leave them behind" in State efforts to implement development goals such as the Sustainable Development Goals. Such recognition by the State can also help facilitate political reintegration for internally displaced persons whose relationship with the State will in some contexts have been inherently damaged.

56. National authorities must more fully engage in and support participatory processes from the outset and throughout. While non-governmental organizations and international actors should remain essential partners in the implementation thereof, facilitating the participation of internally displaced persons must be understood as an obligation of Governments. Improving participation and ensuring that it is meaningful and that outcomes are applied to the approaches is an effective means of improving the accountability of Governments towards internally displaced persons.

G. Coordination: transitional justice measures across sectors

57. Owing to the complexity and scope of large-scale internal displacement, closer links between the actions of a range of different actors, such as practitioners, policymakers and researchers in the fields of transitional justice, human rights, humanitarian, development and peacebuilding is needed in order to adequately address the challenges. Much is already known about effective transitional justice measures and about preventing, responding to and resolving internal displacement; however, this knowledge is sometimes scattered across fields, disciplines and communities of practice, with the inherent risk that it will not be deployed broadly, systematically and in an interdisciplinary manner. Bridging this possible divide between transitional justice actors and humanitarian, development, human rights and peacebuilding practitioners is of great importance. These actors often operate in the same contexts, and opportunities for stronger collaboration and cooperation should therefore be sought out.[43]

58. Peacebuilding and development actors should also have a voice in joint efforts engaged to meet the needs of internally displaced persons during the peacemaking process, and beyond. Opportunities in countries for achieving transitional justice during and following situations of internal displacement have arisen most frequently in and around peace processes aimed at ending internal armed conflicts. Peace agreements may represent opportunities to address both internal displacement and transitional justice at the same time.[44]

59. Although humanitarian organizations broadly support and promote efforts to fight impunity, there is sometimes a concern that public cooperation with criminal justice processes may compromise their neutrality, restrict access to vulnerable populations and put staff in the field at risk. Nevertheless, some agencies have engaged with criminal tribunals, sometimes by means of amicus curiae or in other ways, and a number of tools and protective measures can be used in order to minimize

[43] Bryce Campbell, "Addressing concerns about transitional justice in contexts of displacement: a humanitarian perspective", Project on Internal Displacement, International Center for Transitional Justice and Brookings-LSE (June 2013).

[44] See Kirsten McConnachie, "Dealing with displacement in Myanmar's peace process", Political Settlements Research Programme working paper (Global Justice Academy, University of Edinburgh, 2017), pp. 12–14. Available from www.politicalsettlements.org/files/2017/09/201709_WP_McConnachie_Myanmar-Working-Paper.pdf.

potential negative effects, including witness confidentiality and non-disclosure of information to the public.

IV. Conclusions and recommendations

A. Conclusions

60. **The experience of internal displacement often encompasses massive human rights violations and abuses prior to, during and in the aftermath of displacement, the consequences of which continue while persons remain displaced and even after they have achieved physical return, local integration or settlement elsewhere. To date, transitional justice has not adequately addressed the issue of displacement as squarely as it has other types of abuses.**

61. **The recognition that internally displaced persons have the right to participate fully in transitional justice mechanisms and peacebuilding processes must be reinforced, as must the responsibility of Governments to guarantee such participation in practice.**

62. **To effectively respond to internal displacement, transitional justice measures should ensure complementarity with humanitarian, development and peacebuilding interventions. Coordination and cooperation should, as far as possible, be increased across all sectors associated with transitional justice, while also acknowledging the challenges that exist. Incorporating gender perspectives in transitional justice measures is crucial, as men and women experience displacement differently and suffer different abuses throughout displacement.**

63. **Transitional justice measures are most likely to be effective in addressing internal displacement when they form part of a broader but coherent overall response to internal displacement. Programmes should therefore be designed and implemented in a holistic manner, so that different measures to address displacement-related injustices are mutually reinforcing. Internally displaced persons may be more inclined to see reparations as an appropriate and just measure if those reparations are combined with other measures that also address the injustices of the displacement itself, such as holding perpetrators accountable, publicly acknowledging the displacement and reforming institutions in order to prevent its recurrence. Strengthening legal frameworks against displacement can also be an important part of guaranteeing non-recurrence.**

64. **Transitional justice can play a significant role in facilitating the reintegration of internally displaced persons, which is a critical aspect of achieving durable solutions. Transitional justice measures, such as criminal justice and justice-sensitive security sector reform are able to address this by, for example, improving security in the local communities and helping prevent the recurrence of the abuses that led to displacement by holding perpetrators accountable and dismantling criminal structures. Reparations and restitution can also facilitate reintegration through economic recovery, access to land, re-establishing livelihoods and providing educational assistance. Truth-telling contributes specifically to social reintegration by forming mutual understanding between all groups who have been affected by the conflict and thereby reducing tensions. Transitional justice can also facilitate political reintegration for internally displaced persons whose relationship with the State will in some contexts have been inherently damaged.**

B. Recommendations

65. **States and the international community should ensure that the full potential of transitional justice to contribute to preventing and resolving internal displacement is maximized. Responses to internal displacement in post-conflict contexts should more consistently incorporate transitional justice mechanisms, and transitional justice measures should fully include internally displaced persons in their processes. It is important to balance early action on transitional justice with long-term approaches in order to maximize impact on resolving displacement.**

66. **States and the international community must deliver greater commitment to supporting the design and implementation of comprehensive frameworks of transitional justice to address the root causes of violence and conflict which leads to internal displacement. These frameworks must be developed through a comprehensive process of consultation at the national level and must be tailored to the specifics of each context.**

67. **In the present report, the Special Rapporteur hopes to revitalize and enhance a needed conversation between a range of actors, including Governments, United Nations agencies, international organizations, non-governmental organizations and internally displaced persons, with an ultimate goal of moving from discussion to improved practice.**

68. **The Special Rapporteur recommends that States and transitional justice actors:**

Approach

(a) **Develop national strategies in consultation with displaced communities for identifying and responding to the concerns of internally displaced persons through context-sensitive, appropriate, feasible and coherent transitional justice measures. In order to be effective, strategies must adhere to the guidance and obligations of existing international frameworks but also be based on detailed assessments of regional, national and local contexts;**

(b) **Carefully monitor and evaluate transitional justice processes with the involvement of internally displaced persons and assess the impacts of initiatives on an ongoing basis so that redress and reconciliation efforts can be recalibrated if necessary;**

(c) **Ensure that expectations regarding transitional justice programmes designed for internally displaced persons are modest and clearly explained and avoid the idealization of return as a sign of reconciliation;**

(d) **Embrace a long-term approach to supporting efforts for justice and durable solutions, recognizing that even small successes in resolving internal displacement, redressing past injustices and promoting reconciliation may bring new claims and conflicts to the fore;**

(e) **Consistently take into account context-sensitive factors when designing and implementing transitional justice measures responding to the injustices of internal displacement, such as any ongoing conflicts, land and property issues and informal justice and security measures. In particular, restitution measures should take into account the sensitivities in respect of housing, land and property issues in post-conflict settings;**

(f) Recognize both the positive role and the potential limitations of local or customary approaches to advancing transitional justice and reconciliation for internally displaced persons;

(g) Avoid portraying transitional justice as restoring the status quo ante, as this is often impossible and may be counter-productive when the status quo ante was itself highly unjust or the cause of the displacement;

(h) Legal frameworks should be based on legislative recognition of known patterns of victimization that occurred in connection with the internal displacement as a means of justifying such frameworks and ensuring that they facilitate efficient procedural approaches, such as reduced burdens of evidence;

Implementation

(i) Ensure that demographic data and profiling analysis are used, in line with applicable data protection laws, in order to document the scope and patterns of internal displacement and support specific units and investigation methodologies set up at the national level for crimes of internal displacement;

(j) Establish independent investigation methodologies and prosecutorial strategies at the national level for the crime of arbitrary and forced internal displacement;

(k) Take account in transitional justice programmes of the particular needs of internally displaced persons who are also family members of missing persons by ensuring that their right to know the fate and whereabouts of their missing relatives is properly addressed;

(l) Support compensation approaches that ensure beneficial impacts by promoting equitable development and (re)integration, and which take into account the specific needs of internally displaced women, giving them greater control over the way in which reparation programmes and benefits are assigned, in order to advance durable solutions. Provide reparations in the form of education and training programmes;

(m) Support capacity-building of transitional justice actors by addressing the range of injustices experienced by internally displaced persons;

(n) For criminal prosecutions, specific investigation methodologies should be established relating to displacement, and demographic evidence and testimony should be used, where appropriate, to ensure an accurate portrayal of the population group affected, its experiences and responsibility for its displacement;

(o) Consider the possibility of collective reparations, where appropriate, in accordance with the expressed needs of internally displaced communities when they return or at their place of local integration or settlement elsewhere;

Participation

(p) Incorporate explicitly into the mandates of truth commissions the investigation of internal displacement and engagement with internally displaced persons;

(q) Ensure that in-depth needs assessments to set priorities are conducted as part of transitional justice processes so that mechanisms are designed to address issues faced by internally displaced persons in accordance with the priorities of the latter;

(r) Systematically involve internally displaced persons by: consulting with them on the design of transitional justice and reconciliation initiatives; seeking their input as witnesses in trials and truth commissions; appointing internally displaced persons to positions of responsibility in transitional justice bodies and projects; and employing information and communication technologies to support such involvement in dispersed geographic locations, while recognizing that the function of such tools is limited by lack of access to advanced technologies and the need for opportunities for in-person participation;

(s) Ensure the active participation of internally displaced persons in peace negotiations and the inclusion of detailed provisions on the rights of internally displaced persons in peace treaties, setting the stage for transitional justice mechanisms;

(t) Coordinate outreach programmes that attempt to reach all internally displaced persons and persons affected by displacement, via the usage of multiple languages, media and technology to maximize the dissemination of information and engagement with host communities;

(u) Allow for the consideration of internally displaced persons for formal roles within truth commissions, such as investigators, community focal points or commissioners, on the basis of their existing capacities, which may need to be reinforced through capacity-building. Provide effective protection measures to enable secure participation by internally displaced persons in such processes;

(v) Ensure equitable opportunities for internally displaced women to participate in justice processes at all stages by actively consulting displaced women's groups in the design and implementation of such processes; putting in place mechanisms that ensure their physical security; and supporting women to occupy leadership roles in justice institutions;

(w) Acknowledge that it may not always be possible to provide direct, material benefits such as financial compensation to very large numbers of internally displaced persons, and ensure that expectations are carefully handled through clear communications with internally displaced persons about the particular benefits being offered, their limitation, eligibility, duration and the distribution process;

Sustainability

(x) Ensure that any transitional justice measures are implemented in parallel with a broader set of structural reforms that address the root causes of internal displacement;

(y) Harmonize efforts involving individuals and communities affected by internal displacement so that they support broader transitional justice, development, humanitarian, peacebuilding and reconciliation strategies, as well as social processes such as urbanization and the evolution of more equitable gender roles;

(z) Support transformation of structures and institutions that facilitated gender injustices, such as entrenched approaches to property ownership, while ensuring that efforts to address women's claims to land ownership are context-sensitive;

(aa) Ensure that justice-sensitive security sector reform efforts form part of a broader set of structural reforms that address the root causes of

displacement, such as land reform, broader justice and security sector reform and institutional capacity-building;

(bb) Take the lead on further sustained dialogue, discussions, research, policy and practical initiatives on the interlinkages between transitional justice and internal displacement, with a view to maximizing the potential that such processes can have on individuals and communities affected by internal displacement.

69. **The Special Rapporteur recommends that international humanitarian and development partners and the international donor community:**

(a) Strengthen organizational capacity to engage with, and more systematically support, transitional justice processes. Displacement-focused organizations and key actors involved in protecting and assisting internally displaced persons should maximize effective engagement on transitional justice issues by appointing focal points for transitional justice, secondments and specialized training opportunities;

(b) Support internally displaced persons in effectively accessing valid informal mechanisms while ensuring that such customary processes are attuned to human rights principles;

(c) Ensure that the meaningful engagement and participation of internally displaced persons are at the centre of transitional justice measures by making materials available in different languages, holding events both in informal settlements and cities and sending investigators and/or officials to meet internally displaced groups; and use media and technology to disseminate information to dispersed groups.

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Item 74 (b) of the preliminary list*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Note by the Secretariat

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Maud de Boer-Buquicchio, submitted in accordance with Assembly resolution 72/245.

* A/73/50.

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Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Summary

In the present report, submitted pursuant to General Assembly resolution 72/245, the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, describes the activities undertaken in relation to the discharge of her mandate since her previous report to the Assembly (A/72/164).

She also presents a thematic study on combating and preventing the sale and sexual exploitation of children through the implementation of the Sustainable Development Goals from a children's rights-based perspective. The study includes an analysis of the current accountability mechanisms that are part of the 2030 Agenda for Sustainable Development and provides recommendations on how to ensure that children are not left behind in the review process.

I. Introduction

1. The present report, submitted pursuant to General Assembly resolution 72/245, contains information on the activities undertaken by the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, from August 2017 to August 2018.

2. The report also includes a thematic study on combating and preventing the sale and sexual exploitation of children through the implementation of the Sustainable Development Goals from a children's rights-based perspective.

II. Activities carried out by the Special Rapporteur

A. Conferences and engagement with stakeholders

3. Information on the activities carried out in this area by the Special Rapporteur in 2017 can be found in her annual report to the Human Rights Council, submitted at its thirty-seventh session (A/HRC/37/60, paras. 4–5).

4. On 8 and 9 February 2018, the Special Rapporteur participated in a meeting of the Experts' Group on Parentage/Surrogacy, organized by the Hague Conference on Private International Law and held in The Hague, Netherlands.

5. On 14 and 15 February, she attended the End Violence Solutions Summit, hosted by the Government of Sweden, the Partnership to End Violence against Children and the WeProtect Global Alliance, in Stockholm.

6. In her annual report to the Human Rights Council, submitted at its thirty-seventh session (A/HRC/37/60), the Special Rapporteur focused her research on surrogacy and the sale of children. In that context, on 6 March, she organized an event on surrogacy in which she brought together several experts from different backgrounds.

7. On 15 March, the Special Rapporteur participated in an expert meeting on sexual exploitation and abuse organized by the Victims' Rights Advocate and held in New York.

8. On 10 April, she took part in the Experts and Advisory Board meeting of the global study on children deprived of liberty, which was held in Vienna.

9. On 29 May, the Special Rapporteur spoke at an event organized by the Expert Group on Children at Risk of the Council of the Baltic Sea States on good practices in the identification and referral of children at risk of exploitation and trafficking, held in Oslo.

10. On 28 June, she addressed the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe, in Strasbourg, France.

11. On 5 July, the Special Rapporteur gave a lecture on trafficking and other forms of exploitation of children that was organized by the University of Leiden in the context of the Frontiers of Children's Rights Summer School, which was held in Leiden, Netherlands.

B. Country visits

12. The Special Rapporteur visited the Lao People's Democratic Republic from 8 to 16 November 2017, at the invitation of the Government. She also conducted a

visit to Ireland from 14 to 21 May 2018. The report on those missions will be presented to the Human Rights Council during its fortieth session, in March 2019. The Special Rapporteur thanks both Governments for their cooperation before, during and after the visits.

13. The Government of Malaysia has agreed to a visit by the Special Rapporteur from 24 September to 1 October 2018. The Special Rapporteur is grateful for the acceptance of her request and looks forward to a constructive dialogue in the preparation for the mission.

III. Thematic study on combating and preventing the sale and sexual exploitation of children through the implementation of the Sustainable Development Goals from a children's rights-based perspective

A. Introduction

14. As mandated by the Human Rights Council in its resolution 34/16, the Special Rapporteur launched an in-depth review of the ongoing implementation of the 2030 Agenda, with the ultimate goal of eradicating the sale and sexual exploitation of children. The initial reviews of the fulfilment of the 2030 Agenda by the high-level political forum on sustainable development represent an ideal opportunity for the Special Rapporteur to advocate a specific focus on realizing the rights of the child.

15. In the present study, the Special Rapporteur takes stock of the existing pledges to achieve the Sustainable Development Goals and provides guidance for all stakeholders concerned on how to effectively pursue and reflect the implementation of targets relating to the rights of the child. She aims in particular to advocate greater accountability on the part of Governments and a pragmatic use of existing reporting mechanisms.

B. International policy framework

16. As stated in its preamble, the 2030 Agenda, which was adopted by all Member States by consensus in September 2015 in the form of General Assembly resolution 70/1, is intrinsically linked to human rights. In the 2030 Agenda, States declared their intention to protect human rights and promote gender equality and the empowerment of women and girls.[1]

17. Moreover, States envisaged a world of universal respect for human rights and human dignity which invests in its children and in which every child grows up free from violence and exploitation.[2] In addition, they crucially confirmed the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law.[3] That fundamental vision mirrors the purpose of the mandate of the Special Rapporteur to eradicate the sale and sexual exploitation of children.

18. Each Sustainable Development Goal also reflects one or several obligations of States parties to international human rights instruments. A mapping prepared by

[1] General Assembly resolution 70/1, para. 3.

[2] Ibid., para. 8.

[3] Ibid., para. 19.

UNICEF illustrates this interrelation in respect to the Convention on the Rights of the Child.[4]

19. Three targets relate directly to issues that fall within the scope of the mandate of the Special Rapporteur, namely: target 5.3, to eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation; target 8.7, which calls for immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms; and target 16.2, to end abuse, exploitation, trafficking and all forms of violence against and torture of children.

20. Those specific targets reflect core international norms and standards. For example, target 5.3 corresponds to the implementation of articles 1 to 6 of the Convention on the Elimination of All Forms of Discrimination against Women, of articles 1 to 4 of the Declaration on the Elimination of Violence against Women and articles 24 (3) and 35 of the Convention on the Rights of the Child. At the same time, target 8.7 reflects the implementation of article 4 of the Universal Declaration on Human Rights, article 8 of the International Covenant on Civil and Political Rights, article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, articles 32 and 34 to 36 of the Convention on the Rights of the Child, the International Labour Organization (ILO) Minimum Age Convention, 1973 (No. 138), and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). Lastly, target 16.2 corresponds to articles 19 and 34 to 37 of the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography.[5]

21. In addition, children are recognized in the 2030 Agenda as a vulnerable group that needs to be empowered, and they are acknowledged as rights holders who can be agents of change.[6]

22. Member States also committed themselves to ensuring that the follow-up and review processes relating to the implementation of the 2030 Agenda would be people-centred and gender-sensitive, respect human rights and have a particular focus on the poorest, most vulnerable and those furthest behind.[7] They further suggested that the follow-up and review of the implementation should build on existing reporting mechanisms (see A/70/684, para. 85), which could include existing human rights reporting mechanisms, such as those of the Human Rights Council, treaty monitoring bodies and specialized agencies.

C. Analysis of the implementation of the Goals

23. In view of the specific mandate of the Special Rapporteur, an analysis of the Goals relating to children's rights was undertaken. Whenever possible, the three Goals that directly pertain to her mandate were reviewed.

1. Global indicators

24. In order to measure progress towards the accomplishment of the 2030 Agenda successfully, it is crucial to collect and analyse data. In this regard, the Inter-Agency and Expert Group on Sustainable Development Goal Indicators was established to develop and implement the global indicator framework for the Goals and targets. The

[4] Available at www.unicef.org/agenda2030/files/SDG-CRC_mapping_FINAL.pdf.

[5] See also www.ohchr.org/Documents/Issues/MDGs/Post2015/HRTB_Contribution_26May2016.pdf.

[6] See General Assembly resolution 70/1, paras. 23 and 51.

[7] Ibid., para. 74.

Group identified UNICEF as custodian or co-custodian of 17 Goal indicators, including those for targets linked to the mandate of the Special Rapporteur, namely, targets 5.3, 8.7 and 16.2. ILO and the United Nations Office on Drugs and Crime (UNODC) are also custodian agencies for certain indicators of targets 8.7 and 16.2.

25. The specific indicators that are pertinent to the mandate of the Special Rapporteur are as follows: indicator 5.3.1, for which UNICEF is the custodian agency, serves to measure the percentages of women between 20 and 24 years of age who were first married or in a union before the age of 15 and before the age of 18. Indicator 8.7.1, for which UNICEF and ILO serve as co-custodians, is used to measure the proportion and number of children between 5 and 17 years of age who are engaged in child labour, disaggregated by sex and age. Indicator 16.2.2, for which UNODC is the custodian agency, serves to measure the number of victims of human trafficking per 100,000 population, disaggregated by sex, age and form of exploitation. Lastly, indicator 16.2.3 is used to measure the proportion of young women and men between 18 and 29 years of age who have experienced sexual violence before the age of 18. That indicator is under the custodianship of UNICEF.[8]

26. The indicators mentioned above do not cover all of the numerous human rights violations that fall within the scope of the mandate of the Special Rapporteur. Notably, the need for disaggregation of data regarding the worst forms of child labour, such as the sale of children, child sexual exploitation and child sexual abuse material, is not explicit in the indicator for target 8.7. Furthermore, indicator 16.2.2 does not differentiate between the trafficking and the sale of children, while indicator 16.2.3 does not account for specific forms of sexual violence, such as the various manifestations of sexual exploitation.

27. As detailed in the study conducted by the Special Rapporteur on the sale of children for the purpose of forced labour (see A/71/261), the difference between the sale and trafficking of children should not be overlooked. Indeed, even though both crimes can involve similar realities, the sale of children encompasses several violations that do not fall under the definition of trafficking under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It is thus essential to measure this specific human rights violation.

28. The complex process for adopting indicators renders any substantial change to the list of indicators difficult. Nonetheless, the list will be refined annually and reviewed comprehensively by the Statistical Commission. It is therefore of the utmost importance to encourage States, whenever feasible, to undertake additional data collection that goes beyond the Goal indicators. Moreover, the adoption of indicators at the regional and national levels should be designed to bridge those gaps and consequently to ensure that violations of children's rights are not overlooked.

29. A good example of additional indicators relevant to the mandate of the Special Rapporteur can be found in the treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44 (1) (b) of the Convention on the Rights of the Child (CRC/C/58/Rev.3). The annex to that document contains helpful guidelines for the inclusion of statistical information and data, disaggregated by age or age group, sex, location, minority or indigenous group, ethnicity, religion, disability or any other category that is considered appropriate.

30. Moreover, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has produced a guidance note on data collection and

[8] For the full list of indicators, see General Assembly resolution 71/313.

disaggregation.[9] That document lists six core elements that should guide any data collection exercise, namely, participation, data disaggregation, self-identification, transparency, privacy and accountability.

31. The urgent need for further data collection efforts was confirmed in a recent UNICEF report.[10] The authors of the report concluded that only one in five countries had sufficient data to assess progress towards Goal targets relating to child protection. In respect of child marriage, for example, for which the available comparable data were relatively strong across the world, it was observed that there had been a decline over the past decades, but that progress would not be fast enough to reach the target by 2030.[11]

32. One crucial aspect of data collection is the definition of categories and the use of terminology. A major stumbling block has thus been the plethora of terms used at the national level to describe forms of violence against children. The Special Representative of the Secretary-General on Violence against Children underlined the fact that there was no standard categorization of the forms of violence, and no internationally agreed methodology for data collection in the context of the implementation of the 2030 Agenda (see A/72/275, para. 28). Consequently, the Special Rapporteur is of the view that all stakeholders concerned should consider adopting the *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*,[12] which can be an invaluable reference tool.

33. Nonetheless, there have been several efforts to map the extent of types of children's rights violations. In respect of child labour, the number of children between 5 and 17 years of age who were working declined by 94 million between 2000, when ILO conducted its first survey, and 2016, when the most recent figures were compiled. The number of children in hazardous work also fell by more than half. Those data point to a positive trend, but the rate of decline is still too slow to meet target 8.7 by its 2025 deadline.[13] Specifically, estimates for 2016 showed that 1 million children were subject to commercial sexual exploitation, 3 million children were in forced labour for other forms of labour exploitation and 300,000 children were in forced labour imposed by State authorities.[14] It must be kept in mind that those estimates cover only 70 per cent of the world's population of children between the ages of 5 and 17 years.[15] Moreover, ILO underlines the difficulty of finding reliable national data on children in bonded and forced labour or in commercial sexual exploitation.[16]

34. Furthermore, in the report of the Secretary-General on progress towards the implementation of the Goals (E/2018/64, para. 127), it was noted that 570 different flows involving trafficking in persons had been detected across the world between 2012 and 2014. In addition, the majority of trafficking victims detected in 2014 were women and girls, who accounted for 71 per cent of the total, and about 28 per cent were children (20 per cent girls and 8 per cent boys). More than 90 per cent of the victims detected had been trafficked for sexual exploitation or forced labour. It

[9] OHCHR, "A human rights-based approach to data: leaving no one behind in the 2030 Agenda for Sustainable Development" (2018). Available at www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

[10] UNICEF, "Progress for every child in the SDG era" (2018). Available at https://data.unicef.org/resources/progress-for-every-child-2018/.

[11] Ibid., pp. 64 and 65.

[12] The guidelines were adopted in 2016 by an inter-agency working group that brought together representatives of civil society, regional bodies, specialized agencies, United Nations agencies, human rights mechanisms and academia. See http://luxembourgguidelines.org/.

[13] ILO, *Global Estimates of Child Labour: Results and Trends, 2012–2016* (Geneva, 2017), p. 11.

[14] Ibid., p. 13.

[15] Ibid., p. 14.

[16] Ibid., p. 21.

remains to be seen whether updated figures on trafficking in persons will indicate a decline in the number of victims and whether there will be an opportunity to disaggregate the data further to cover the sale of children and the forms of exploitation.

2. High-level political forum on sustainable development

35. The high-level political forum on sustainable development is the main United Nations platform on sustainable development and plays a central role in the follow-up to and review of the 2030 Agenda. The forum is informed by the contributions of Member States, the organizations of the United Nations system, other relevant intergovernmental organizations, major groups and other stakeholders.

36. The analysis below contains a review of relevant thematic reports and submissions and the voluntary national reviews presented during the sessions of the forum in 2016 and 2017. The former session was focused on ensuring that no one was left behind, while the latter was dedicated to the topic of eradicating poverty and promoting prosperity in a changing world.

Analysis of thematic reports by specialized agencies and other stakeholders

37. Several key stakeholders contributed to the first session of the forum, in 2016. In general, a strong link was created between the 2030 Agenda and its human rights-based implementation.

38. In his report on progress towards the implementation of the Goals, the Secretary-General highlighted in particular that children and young people were potential agents of change and partners for implementing the 2030 Agenda, even though they faced enormous challenges (E/2016/75, para. 129). The President of the Human Rights Council underscored in his submission[17] that children were among the population groups that faced multiple and intersecting forms of discrimination.

39. In its submission,[18] the major group for children and youth[19] placed specific emphasis on the importance of disaggregated data in monitoring the implementation of the Goals, in order to ensure that no group of children and youth was left behind. The major group also made a clear statement that the Goals were more than aspirational targets and commitments, since they were grounded in human rights obligations that States had taken on when they had ratified international human rights treaties, such as the Convention on the Rights of the Child.

40. The selected reports mentioned above demonstrate that, in 2016, children were considered mainly from the perspective of a group at risk of being left behind. There was, however, no explicit reference to the sale and sexual exploitation of children. Furthermore, a children's rights-based approach to the 2030 Agenda was not apparent.

41. In 2017, with a focus on gender, reference was made in several reports prepared for the forum to violence against women and girls. For example, in its contribution, the Commission on Crime Prevention and Criminal Justice[20] highlighted that such violence was a human rights violation that also generated significant economic costs for women, their families and societies as a whole. Such violence undermined poverty

[17] Available at www.ohchr.org/Documents/Issues/MDGs/Post2015/Contribution2016HLPF.pdf.

[18] Available at https://sustainabledevelopment.un.org/content/documents/10112MGCY-HLPF%20Paper%202016.pdf.

[19] Major groups represent the sectors of society that are recognized as necessary to achieve sustainable development.

[20] Available at https://sustainabledevelopment.un.org/content/documents/14555Comm_on_Crime_prevention_and_Criminal_Justice.pdf.

reduction efforts, as it adversely affected a country's human, social and economic development.

42. In its submission,[21] OHCHR focused on children's rights. It highlighted the importance of the 2030 Agenda in maintaining a focus on adolescent girls and addressing particular challenges and barriers, such as child marriage and unwanted pregnancy, HIV transmission, female genital mutilation and acquiring the education and skills that they needed to realize their potential.

43. In the 2017 report on progress towards the Goals (E/2017/66, para. 9), the Secretary-General underscored the progress that had been made regarding harmful traditional practices, such as child marriage. That decline was driven in particular by a steep reduction in the marriage rate among girls under 15 years of age.

44. In its ministerial declaration, the forum also reconfirmed the commitment to ending violence against women and girls and to taking action to prevent and eliminate all forms of violence and discrimination against women and girls through the strengthening of institutional mechanisms and legal frameworks (see E/HLS/2017/1, para. 17).

45. The adoption of the Goal indicators in 2017 and the focus on Goal 5, namely, achieving gender equality and empowering all women and girls, led to a demonstrable increase in attention to the protection of girls from violence. Nevertheless, the information provided generally did not make it possible to evaluate whether substantial progress had been made in the implementation of targets 5.3, 8.7 and 16.2.

Analysis of voluntary national reviews

46. As is clearly stated in the 2030 Agenda, the regular reviews by the forum are to be voluntary, country-led and undertaken by all countries, including both developed and developing countries, and should provide a platform for partnerships, including through the participation of major groups and other relevant stakeholders.[22] Voluntary national reviews are consequently a fundamental step in the reflection of the implementation of the Goals.

47. States are provided with guidance on how to prepare those reviews by the voluntary common reporting guidelines proposed by the Secretary-General.[23] The Department of Economic and Social Affairs has also produced a detailed handbook for the preparation of reviews.[24] In both the guidelines and the handbook, countries are encouraged to report on progress in relation to all 17 Goals, and to cover in greater depth the priority targets identified for each session of the forum.

48. Unfortunately, the inclusion of a statistical annex in the reviews remains optional in both documents, thus hampering the collection of data, which is vital for monitoring the implementation of the 2030 Agenda. Moreover, the two documents contain only implicit references to the use of human rights mechanisms for reporting purposes, as States are called upon to draw on existing reports in order to reduce the reporting burden.

49. Over half of Member States have either reported to the forum at one or both of its two most recent sessions or committed themselves to reporting in 2018. There is thus strong interest in engaging in the process of implementing the 2030 Agenda.

[21] Available at https://sustainabledevelopment.un.org/content/documents/16641OHCHR.pdf.

[22] General Assembly resolution 70/1, para. 84.

[23] See https://sustainabledevelopment.un.org/content/documents/17346Updated_Voluntary_Guidelines.pdf.

[24] Department of Economic and Social Affairs, Division for Sustainable Development, "Handbook for the preparation of voluntary national reviews", 2018 ed.

50. The review of a sample of 64 reviews in the context of the present report has made it possible to draw several key conclusions.[25] First, the length, level of detail, format and focus vary substantially by review, with reviews ranging in length from 29 to 386 pages. Second, the scope of the reviews has tended to mirror the theme of the sessions of the forum rather than cover all of the Goals. Lastly, in half of the reviews, children were hardly mentioned, and in six reviews not included at all. Indeed, in those reviews, the few references made to children included no indication of the level of implementation of the Goals.

51. In respect of the specific targets falling within the scope of the mandate of the Special Rapporteur, child marriage featured prominently in the reviews.[26] For example, Bangladesh, Nigeria and Zimbabwe indicated that national laws, policy frameworks and action plans had been adopted to deal with that human rights violation. In particular, Zimbabwe mentioned a ruling of its Constitutional Court in 2016 that outlawed the marriage of persons under the age of 18 years, and Nigeria brought to the fore the inclusion of child marriage as part of an awareness and sensitization campaign on gender equality.

52. Target 8.7 was also mentioned as a priority in several reviews. Colombia and Venezuela (Bolivarian Republic of) highlighted the issue of the recruitment of children and their use in hostilities. At the same time, Kenya, Nigeria and Uganda provided national data on the prevalence of child labour. Jordan, Kenya, Togo, and Uganda further emphasized the existence of legislation and policy frameworks on child labour.

53. Very few references were made to the specific forms of sexual exploitation covered by the mandate of the Special Rapporteur. The topic of combating sexual exploitation in the context of tourism and travel, as well as child sexual abuse material, through the training of professionals, was raised by the Netherlands. In addition, Costa Rica indicated that it was strengthening its strategies on commercial sexual exploitation, while Belize referred to its legislation prohibiting the commercial sexual exploitation of children.

54. Other countries, including Guatemala, Italy and Portugal, mentioned both exploitation and trafficking as priority areas. Uruguay identified challenges in relation to data collection on trafficking and described the establishment of an inter-institutional working group to combat trafficking. Similarly, Japan presented a plan of action against child sexual exploitation.

55. Specific references to children's rights and the Convention on the Rights of the Child were made by Egypt, Germany and Venezuela (Bolivarian Republic of). In particular, the Bolivarian Republic of Venezuela explained that children had been recognized as full subjects of rights in the Constitution. In addition, Belgium made specific reference to the Committee on the Rights of the Child and its recommendations, detailing how the Belgian National Commission on the Rights of the Child had developed 40 national indicators to provide a better understanding of the extent to which children's rights were increasingly being realized.

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[25] The voluntary national reviews of the following countries were examined: Afghanistan, Argentina, Azerbaijan, Bangladesh, Belarus, Belgium, Belize, Benin, Botswana, Brazil, Chile, China, Colombia, Costa Rica, Cyprus, Czechia, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Guatemala, Honduras, India, Indonesia, Italy, Japan, Jordan, Kenya, Luxembourg, Madagascar, Malaysia, Maldives, Mexico, Monaco, Montenegro, Morocco, Nepal, Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Portugal, Qatar, Republic of Korea, Samoa, Sierra Leone, Slovenia, Sweden, Switzerland, Tajikistan, Thailand, Togo, Turkey, Uganda, Uruguay, Venezuela (Bolivarian Republic of) and Zimbabwe.

[26] The voluntary national reviews mentioned in the paragraphs below can be found at https://sustainabledevelopment.un.org/vnrs/.

56. The question of the investment of public resources for the realization of children's rights was generally absent in most reviews. The input from Argentina stands out as an exception through the inclusion of data relating to the budget of the national public administration. The budget allocation and expenditure for the National Secretariat for Children, Young Persons and the Family were provided in respect of the eradication of poverty.

57. Nine countries[27] that have been designated as "pathfinding" under the Global Partnership to End Violence against Children also presented their reviews. Remarkably, the commitment of those countries to implementing target 16.2 is not generally reflected therein. There is no specific emphasis on implementation, with little information provided on measures taken to strengthen legislation, policies, coordination mechanisms, the investment of national resources, and prevention and response services in order to tackle violence against children.

58. The participation of children in the review of and follow-up to the 2030 Agenda is another strong indicator of implementation. Ten reviews described such a participatory approach through the use of schools, workshops, consultations and child parliaments.[28] For example, in Morocco, a special session was organized with the support of UNICEF to consult children and young people on national development priorities. In Denmark, several primary and secondary schools also took measures to increase awareness and to develop solutions for the attainment of the 2030 Agenda. In Chile, hundreds of thousands of children were reached in the "Yo Opino, es mi derecho" initiative, with a view to identifying their priorities and suggesting affirmative action to achieve the Goals. Nevertheless, the reviews do not indicate whether the consultation processes were institutionalized and rendered permanent or how the recommendations from children were acted upon.

59. The overall analysis of the above-mentioned reviews indicates that it is difficult to attain a clear understanding of the level of implementation of the 2030 Agenda in respect of children's rights. The present study reveals a fragmented approach in the production of reviews and a lack of uniformity and coherence in the level of detail provided. In addition, there is a lack of coordination at the national level in respect of the information compiled for different reporting mechanisms.

60. Specific references to the violations of children's rights falling within the scope of the mandate of Special Rapporteur are rare and often lack substance when they do appear. Even though it is apparent that action is being taken at the national level to prevent violence against children, the information is not currently reflected in reviews. This underreporting translates into a lack of attention to the issue of violence against children at the forum.

61. The Special Representative of the Secretary-General on Violence against Children has repeatedly voiced her concerns regarding the paucity of references to children's rights and to protection issues such as violence, abuse and exploitation in reviews. In 2017, her office did observe some progress in the amount of time devoted to children's rights in relevant forums, but a substantial gap remains.

3. Global partnerships

62. A key aspect of the implementation of the 2030 Agenda has been the creation of partnerships for sustainable development, which are multi-stakeholder initiatives that

[27] El Salvador, Indonesia, Japan, Mexico, Montenegro, Nigeria, Philippines, Sweden and Uganda.

[28] See UNICEF, Agenda 2030 Unit, Public Partnership Division, *2017 High Level Political Forum Voluntary National Reviews: An Analysis of the Reports of the 43 Governments Who Presented a National Review, from a Child Rights Lens* (September 2017).

bring together a multitude of actors.[29] Two are particularly relevant to the mandate of the Special Rapporteur: the Global Partnership to End Violence against Children and Alliance 8.7.

63. The Global Partnership was launched by the Secretary-General in July 2016 and strives to make societies safer for children and to end violence against children everywhere. Thus far, the Global Partnership has not engaged strongly with the high-level political forum. It has focused on building its constituency of pathfinding countries and organizing its Solutions Summit, which provided an opportunity for the Global Partnership to produce a progress report on the implementation of target 16.2.

64. The pathfinding country progress report published by the Global Partnership in 2017 is a particularly strong tool for monitoring the implementation of the Goals. In the report, an update on key recommendations of the Committee on the Rights of the Child is provided for each country. Moreover, pathfinding countries are required to indicate how their political will and coordination in ending violence against children is being realized. They must also describe the consultation process that has accompanied the development of road maps, priorities and action plans. In addition, data collection efforts in the area of ending violence against children must be reported. Lastly, a progress report on implementation and an evaluation are included in the report.

65. In parallel, it is expected that the Global Partnership will concentrate its efforts on giving support to pathfinding countries on how to produce reviews that effectively highlight their commitments to ending violence against children.

66. The Global Partnership has an associated fund that provides financial support for programmes and activities aimed at promoting target 16.2. To date, this crucial implementation process has led to the funding of 31 national, regional and global projects dedicated to ending the online sexual exploitation and abuse of children. A total of $24 million in grants was awarded through two calls for proposals issued by the fund. In addition, the fund has provided $5.4 million in funding for 12 projects in Nigeria and Uganda that support children facing violence in conflict and crisis settings.

67. Closely linked to the Global Partnership is the WeProtect Global Alliance, which contributes directly to its associated fund. The Alliance focuses on combating online sexual exploitation by limiting the production, possession and dissemination of child sexual abuse material.

68. The other partnership of interest to the Special Rapporteur is Alliance 8.7, which was launched in September 2017. Its focus on the eradication of forced labour, modern slavery, trafficking in persons and all forms of child labour is particularly relevant. The partnership has established action groups corresponding to priority focus areas, with one of them dedicated to commercial sexual exploitation that also includes children. At present, the group has yet to be put into operation.

69. Regarding implementation, Alliance 8.7 currently relies on the existing ILO monitoring mechanisms for ILO conventions and fundamental principles. Alliance 8.7 will also seek to engage further with the high-level political forum.

4. Other mechanisms and stakeholders contributing to the implementation of the Goals

70. In conjunction with the aforementioned review instruments, several existing mechanisms also contribute to the implementation of the Goals. First, the Universal

[29] More than 3,800 partnerships and commitments have been registered on the United Nations sustainable development website to date. See https://sustainabledevelopment.un.org/partnerships/.

Human Rights Index, which was designed to facilitate access to human rights recommendations issued by several human rights mechanisms, namely, the treaty bodies, the special procedures of the Human Rights Council and the universal periodic review, now offers an option to search by Goal. Users of the Index can thus obtain an overview of recommendations by Goal and/or target.

71. Second, OHCHR is also developing a national human rights recommendations tracking database that will be focused specifically on implementation and will expedite the follow-up to recommendations from human rights mechanisms.

72. Third, since its first session after the adoption of the 2030 Agenda, the Committee on the Rights of the Child has systematically referred to target 16.2 in its concluding observations on reports under the Convention on the Rights of the Child. Moreover, the Committee has created a working group on the 2030 Agenda to ensure consistency between its concluding observations and the Goals. The Committee is also using the reviews as a source of information for its sessions, thus ensuring two-way interaction between the high-level political forum and human rights mechanisms.

73. As indicated previously, the Special Representative of the Secretary-General on Violence against Children has been another key advocate of the follow-up to and review of targets under the Goals relating to the protection of children from violence. Her annual reports to both the Human Rights Council and the General Assembly have systematically included an entire section on the 2030 Agenda. The Special Representative has also engaged repeatedly with regional and subregional intergovernmental organizations, including the Council of Europe, the Association of Southeast Asian Nations, the South Asian Association for Regional Cooperation and MERCOSUR, to ensure the adoption of regional action plans to end violence against children. Lastly, the Special Representative has put the onus on countries submitting their reviews to include explicit references to their efforts and commitments to end violence against children.

74. Another important implementation monitoring mechanism is the monitoring system for recommendations (known as "SIMORE") developed in Paraguay with the assistance of OHCHR. The system represents a unique tool that makes it possible to search all recommendations issued by United Nations human rights mechanisms and by the Inter-American Court of Human Rights in order to monitor how each recommendation is being implemented by relevant ministries and public institutions. Since the initial launch of the system, a new version called "SIMORE Plus" has been inaugurated to incorporate the 2030 Agenda, thus making it possible to clearly observe the link between the implementation of human rights recommendations and the Goals. Moreover, a new module called "OSC-Plus" has been created to facilitate the participation of civil society organizations in monitoring efforts to implement recommendations.

75. The success of the monitoring system for recommendations has led to its emulation across the region. Chile, the Dominican Republic, Guatemala, Honduras and Uruguay have all developed their own versions of the platform. Similar platforms were implemented in the Plurinational State of Bolivia, where it is called "SIPLUS", and in Ecuador, where it is named "Si Derechos". In addition, the Government of Paraguay has signed a memorandum of understanding with the Inter-American Commission on Human Rights in order to bolster that organization's monitoring of the implementation of its recommendations.

76. Generally speaking, national mechanisms for reporting and follow-up can be crucial to monitoring the implementation of the Goals. The existence of national coordinating bodies greatly enhances the possibility of recording and subsequently implementing recommendations relating to the 2030 Agenda. As a result, it is of the utmost importance to provide adequate resources for such mechanisms.

77. Civil society organizations have also actively engaged in the follow-up to and review of the Goals. For example, the Bertelsmann Stiftung and the Sustainable Development Solutions Network developed a Goal index and country dashboards that make it possible to track the global rank and the average performance of countries for each Goal. In respect of the targets within the scope of the mandate of the Special Rapporteur, the prevalence of child labour was the only child protection indicator used to construct the index.

78. Furthermore, non-governmental organizations have produced guidelines for their own country offices at the national level on how to participate in and contribute to reviews. There has also been engagement at the local level with communities and children in order to involve them in national debates on the Goals. For example, the ChildFund Alliance launched an initiative entitled "Toward a safe world for children: child-friendly accountability and SDG target 16.2", the purpose of which is to hold Governments and local leaders accountable for their obligations to end all violence against children, in accordance with target 16.2, through the empowerment of children.

79. Nonetheless, the Special Rapporteur has observed that the vast experience of engagement with human rights mechanisms acquired by non-governmental organizations focusing on children's rights has not yet been applied to the monitoring of the 2030 Agenda. Indeed, there is a need for greater coordination among civil society organizations at both the national and global levels. Moreover, the wealth of information that is compiled and analysed in the context of alternative reports to relevant human rights mechanisms, such as the Committee on the Rights of the Child, is currently not harnessed or used systematically for the follow-up and review procedure for the Goals. At the country level, non-governmental organizations focusing on children's rights still need to better integrate the 2030 Agenda.

D. Accountability

80. For the 2030 Agenda to be attained in time, it is of the utmost importance to have robust follow-up and review mechanisms. From the analysis in the previous sections, it can be concluded that the current set-up does not favour strong oversight over the measures taken by States to implement the Goals.

81. For example, the review reports lack the rigour and systematic nature of reports to human rights mechanisms, which generally makes it difficult to draw conclusions about the level of implementation of the Goals. In addition, no expert assessment of the implementation of the 2030 Agenda is included in the presentation of reviews at the high-level political forum, which has nonetheless represented a valuable platform for discussion and the exchange of experiences and good practices. Without a process similar to the review of States by human rights mechanisms, participating States do not receive country-specific recommendations, which weakens accountability efforts.

82. In respect of children's rights and the specific violations that fall within the scope of the mandate of the Special Rapporteur, it can be observed that they have not been given sufficient attention. Stakeholders providing input on the 2030 Agenda have tended to refer to children but have rarely provided details on efforts to implement the Goals that pertain to children's rights. Violence against children as well as the sale and sexual exploitation of children have yet to be considered priority areas.

83. There is also a question of underreporting by States on existing commitments towards the attainment of the 2030 Agenda. In this regard, the Special Representative of the Secretary-General on Violence against Children reported to the General Assembly in 2016 that more than 90 countries had strengthened national

implementation efforts to free children from violence, especially through the adoption and implementation of comprehensive multisectoral national strategies (see A/71/206, para. 24 (d)). The wealth of information provided by States in their reports to treaty bodies also serves to confirm that their implementation efforts are not being brought to the fore in the context of the Goals. This lack of coordination and consistency hampers accountability efforts.

84. In addition, accountability for the fulfilment of the Goals has been promoted through initiatives at the national level that were not reported in the context of reviews. For example, through its national system for the protection of children and adolescents, Mexico has reviewed all existing national indicators on children's rights. Those indicators covered issues such as violence against children, child labour and bullying. They are now being compared with the indicators defined under the Goals in order to facilitate implementation monitoring. The data will also be made public and accessible through a system called "InfoSIPINNA".

85. Lastly, greater emphasis should be placed on the valuable accountability processes that are part of human rights mechanisms. The significant quantity of information on the implementation of international human rights treaties gathered through the reporting process is closely related to the scope of the 2030 Agenda. Through an efficient use of information, this existing source of data should be harnessed to assist in tracking the implementation of the Goals. Conversely, human rights mechanisms should mainstream the 2030 Agenda in their monitoring procedures in order to participate effectively in accountability efforts.

IV. Conclusion

86. The 2030 Agenda represents an ambitious set of goals to be achieved. Still in its infancy, the current review and follow-up procedure can be improved to ensure that truly no one is left behind. In the first two sessions of the high-level political forum since the adoption of the 2030 Agenda, insufficient attention has been paid to the rights of children and their right to protection from violence, in particular from sale and sexual exploitation.

87. The review of Goals 8 and 16 in the thematic focus of the 2019 session of the forum will be a crucial opportunity to fill this gap. In addition, in 2019 the international community will celebrate the thirtieth anniversary of the Convention on the Rights of the Child. That occasion should be used to genuinely integrate children and their rights into the 2030 Agenda.

88. Moreover, existing accountability instruments, including human rights mechanisms, have yet to be appropriately harnessed for a comprehensive review of and follow-up to the Goals. In view of the voluntary nature of reporting to the forum, greater emphasis should be placed on existing reporting mechanisms, in particular those that are at the heart of the human rights framework, and on the extensive related information that States already provide. Human rights mechanisms such as the treaty bodies, the special procedures of the Human Rights Council and the universal periodic review already include issues covered by the Goals and targets and could therefore enhance accountability for the 2030 Agenda.

89. The goal of ending violence against children still needs to be integrated into development agendas, as it remains a separate consideration in many countries. As highlighted at the beginning of the present report, the 2030 Agenda is inherently linked to human rights.

90. In respect of the specific violations that fall within the scope of the mandate of the Special Rapporteur, partnerships for sustainable development, in particular the Global Partnership to End Violence against Children and Alliance 8.7, represent a vital space for the implementation of targets 5.3, 8.7 and 16.2. Members of those partnerships should serve as leaders for the international community, especially in relation to reporting on the implementation of the Goals.

91. The lack of indicators on the sale and sexual exploitation of children is a matter of great concern to the Special Rapporteur. Data are at the heart of any accountability effort, and their absence jeopardizes efforts to combat the sale and sexual exploitation of children. The very nature of those violations makes data collection extremely challenging. The Goal indicators should thus be seen as an opportunity to finally map those violations. A top priority in this domain should be to standardize definitions and categories through the adoption of the *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. The Special Rapporteur stands ready to collaborate in and contribute to the upcoming reviews of the Goal indicators and in the development of national and regional sets of indicators.

92. To conclude, it should be kept in mind that the Goals, in particular as they relate to child protection, cannot be implemented separately from the enforcement of the Convention on the Rights of the Child, its Optional Protocols and other relevant international norms and standards. Targets 5.3, 8.7 and 16.2 are rights-based and are drawn from the obligations of States parties to those international instruments.

V. Recommendations

93. In view of the varying nature of voluntary national reviews, the Special Rapporteur wishes to provide additional guidance for States and calls upon them:

(a) To ensure that reviews always include reports on children's rights, including commitments, progress and challenges in relation to targets 5.3, 8.7 and 16.2, irrespective of the thematic focus of the high-level political forum at that particular session;

(b) To ensure that information with regard to children's rights in reviews includes, at a minimum, the following information on child protection. If States are not in a position to provide such information, the following list can be seen as a road map for the implementation of the relevant Goals:

(i) An index of existing legal frameworks dealing with prohibition, prosecution, protection, care, assistance and prevention in relation to all forms of physical, mental and sexual violence against, exploitation and neglect of, and harmful practices in relation to children;

(ii) A description of how the national legal framework is aligned with the Convention on the Rights of the Child, its Optional Protocols and other relevant international norms and standards;

(iii) A detailed presentation of the comprehensive child protection strategy and mechanism, as well as a description of how they ensure multisectoral coordination and implementation;

(iv) An indication of the financial investment in action plans, coordination mechanisms, prevention and response services for the protection of children from all forms of violence, abuse and exploitation;

(v) A presentation of specific prevention programmes that address underlying causes of violations of children's rights, such as patriarchal social norms, gender-based discrimination and sexual and reproductive health;

(vi) A description of identification, reporting, referral and investigation mechanisms for all forms of violence against children, such as abuse, exploitation, sale and trafficking;

(vii) A presentation of existing care, recovery and reintegration services for child victims of violence;

(viii) A detailed statement on data collection systems used to identify and document the forms of violence against children;

(ix) An explanation of how stakeholders, in particular civil society organizations, children and young people, were involved in the preparation of the review;

(x) A presentation of the commitments made at the international level, for example through multi-stakeholder partnerships, in support of the implementation of targets 5.3, 8.7 and 16.2.

94. The Special Rapporteur calls upon the international community and specialized agencies of the United Nations system:

(a) To ensure that the necessary attention is given to children's rights during the thematic reviews at the 2019 session of the high-level political forum and that children are able to participate directly in the proceedings meaningfully and safely;

(b) To seize the opportunity of the next revision of the voluntary national review handbook to ensure that it incorporates a human rights-based approach to its guidelines. It should, for example, call for the systematic inclusion of statistical annexes in reviews that reflect both global and nationally developed indicators, especially in areas where data are missing, such as the sale and sexual exploitation of children. In addition, in the next revision, States should be called upon to systematically draw on human rights mechanisms for reporting purposes;

(c) To call upon States preparing for the next cycle of reviews to ensure that they build and follow up on the identified gaps, challenges and conclusions;

(d) To produce common children's rights-based guidelines, addressed to all stakeholders concerned, on how to report to the forum on targets 5.3, 8.7 and 16.2. The aim of the guidelines should be to provide advice for the preparation of the 2019 session of the forum;

(e) To promote the use of the *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* in order to ensure the use of common definitions and categories in the context of data collection;

(f) To strengthen the accountability mechanisms for the implementation of the Goals. In this regard, the Global Partnership to End Violence against Children and Alliance 8.7 should lead the way from a children's rights perspective.

95. **In respect of data collection and the use of Goal indicators, the Special Rapporteur calls for the following:**

(a) **A comprehensive review of the Goal indicators by the Statistical Commission in 2020 and 2025 to offer a meaningful opportunity for all stakeholders to provide input. Those opportunities must be seized to fill the gaps in measuring specific forms of violence against children, such as the sale and sexual exploitation of children;**

(b) **Creation of complementary indicators at the national and regional levels that specifically measure violence against children in its various forms, including sale and sexual exploitation;**

(c) **Engagement of all relevant actors, including human rights mechanisms and civil society organizations, in the collection of data in the context of the 2030 Agenda;**

(d) **Use of the guidance note on data collection and disaggregation developed by OHCHR.**

96. **The Special Rapporteur encourages human rights mechanisms:**

(a) **To comprehensively integrate the Goals into recommendations, guidelines and reports in order to reaffirm the human rights-based implementation of the 2030 Agenda;**

(b) **To pursue and widen the inclusion of references to relevant targets under the Goals in concluding observations relating to violence against children;**

(c) **To increase their engagement with the high-level political forum and systematically use relevant input on the 2030 Agenda in their work.**

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Item 74 (b) of the preliminary list*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Negative impact of unilateral coercive measures on the enjoyment of human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, submitted in accordance with Human Rights Council resolutions 36/10 and 37/21.

* A/73/50.

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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights

Summary

In the present report, the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights considers some recent developments concerning unilateral sanctions on 10 countries. He then focuses on some legal issues arising from the use of unilateral coercive measures during times of war and of peace. He also suggests potential remedies and redress for victims of unilateral coercive measures and proposes that concerned States submit a request for an advisory opinion to the International Court of Justice on the legality of unilateral coercive measures under international law.

I. Introduction

1. The present report is the fourth report submitted by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights to the General Assembly pursuant to Human Rights Council resolution 27/21 and Assembly resolution 72/168.[1]

2. In the present report, the Special Rapporteur considers some recent developments concerning various ongoing sanctions regimes.[2] He then focuses on the issue of discrimination (and non-discrimination) in relation to unilateral sanctions. He also addresses the issue of possible mechanisms to ensure the availability of adequate remedies and redress for victims of unilateral coercive measures, then elaborates on the parameters and practical aspects of his suggestion that concerned States should, especially in the light of recent sanctions-related developments, submit a request for an advisory opinion to the International Court of Justice on the matter.

II. Overview of the activities of the Special Rapporteur

3. A summary of the latest activities of the Special Rapporteur is contained in his report to the Human Rights Council (A/HRC/39/54).

Recent developments regarding the use of unilateral sanctions

4. The past year has seen a number of significant developments regarding the use of unilateral sanctions against a number of countries. While there were positive developments in recent years, including the lifting (actual or intended) of various unilateral sanctions regimes, the current trend seems to point to a more frequent — if not systematic — use of unilateral sanctions as a foreign policy tool by certain countries. Owing to the unavailability of centralized and standardized data at the United Nations level, the Special Rapporteur provides, rather than a comprehensive "year in review" of unilateral coercive measures, a brief overview of key developments that have recently affected certain unilateral sanctions regimes and addresses some of the human rights concerns raised by those developments.

Belarus

5. Targeted sanctions imposed on Belarus by the United States of America since 2006, intended to deal with what the United States saw as "the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus's democratic processes or institutions", have recently been renewed for one year, on the basis of a determination made by the President of the United States in June 2018.[3] By contrast, the European

[1] General Assembly resolution 72/168, para. 26.

[2] The mandate of the Special Rapporteur refers to "unilateral coercive measures", understood as transnational, non-forcible coercive measures other than those enacted by the Security Council acting under Chapter VII of the Charter of the United Nations. The Special Rapporteur, however, uses the expressions "unilateral coercive measures", "unilateral sanctions", "international sanctions" and simply "sanctions" loosely and interchangeably in the present report.

[3] Notice regarding the continuation of the national emergency with respect to the actions and policies of certain members of the Government of Belarus and other persons to undermine democratic processes or institutions of Belarus, 8 June 2018. Available at www.whitehouse.gov/briefings-statements/notice-regarding-continuation-national-emergency-respect-actions-policies-certain-members-government-belarus-persons-undermine-democratic-processes/.

Union and Canada lifted most of their sanctions on Belarus in 2016. The extension of sanctions occurs amid reports of cuts to United States aid (through the United States Agency for International Development) to Belarus.[4]

Cuba

6. The Special Rapporteur cannot but deplore the tightening of United States sanctions against Cuba, through the additional measures enacted by the Government of the United States in November 2017.[5] The stated objective of the measures is to "cumulatively seek to channel economic activities away from the Cuban military, intelligence, and security services, while maintaining opportunities for Americans to engage in authorized travel to Cuba and support the private, small business sector in Cuba". This additional round of unilateral sanctions is all the more disappointing, given that the previous Administration had acknowledged the failure of sanctions and that "isolation hasn't worked", to borrow the words used in 2014 by the then President of the United States, Barack Obama, when announcing steps towards the normalization of relations with Cuba.[6]

Islamic Republic of Iran

7. The Special Rapporteur will continue to monitor closely the worrying developments related to unilateral sanctions on the Islamic Republic of Iran. He has devoted a section of his report to the Human Rights Council (A/HRC/39/54) to the announced reimposition of comprehensive sanctions on the country, coupled with secondary sanctions, intended to be the "strongest sanctions in history", in the words of the Government of the sanctioning country.[7] The Special Rapporteur takes this opportunity to reiterate that he is ready and willing to visit the Islamic Republic of Iran to evaluate the human rights impact of the sanctions there, as appropriate.

Democratic People's Republic of Korea

8. While welcoming the renewed prospects of engagement of the Democratic People's Republic of Korea with the international community and the confidence-building steps being taken on the Korean Peninsula, the Special Rapporteur notes with concern the reported impact of the sanctions in force (and possible overcompliance by financial institutions) on access to critical medicine and health care for thousands of patients in the country. According to reports, the Geneva-based Global Fund to Fight AIDS, Tuberculosis and Malaria, which in 2017 supported the treatment of about 190,000 citizens of the Democratic People's Republic of Korea with tuberculosis, has announced its withdrawal from the country, on grounds believed to relate to concerns of inadvertent sanctions violations.[8]

Qatar

9. The Special Rapporteur has already described the situation of Qatar in his previous report to the General Assembly (A/72/370), noting that the coercive

[4] Tatyana Korovenkova, "Donald Trump khochet polnostyu prekratit finansovuyu podderzhku Belarusi" (Donald Trump wants to completely cease financial support for Belarus), 25 April 2017. Available at https://news.tut.by/economics/540834.html.

[5] United States, Department of the Treasury, "Treasury, Commerce, and State implement changes to the Cuba sanctions rules", press release, 8 November 2017.

[6] Justin Sink, "Obama on Cuba: isolation failed", The Hill, 17 December 2014. Available at http://thehill.com/homenews/administration/227427-obama-on-cuba-isolation-hasnt-worked.

[7] Mike Pompeo, Secretary of State, "After the deal: a new Iran strategy", remarks at The Heritage Foundation, Washington, D.C., 21 May 2018.

[8] Eric Talmadge (Associated Press), "U.S. 'maximum pressure' sanctions on North Korea keep medical care from thousands of patients", Global News, 14 July 2018.

measures in force raise a number of legal issues, and has indicated that he shares the concerns expressed by the United Nations High Commissioner for Human Rights in June 2017 that the measures adopted are overly broad in scope and implementation and have the potential to seriously disrupt the lives of thousands of women, children and men, simply because they belong to one of the nationalities involved in the dispute.[9] The Special Rapporteur also wrote in September 2017 to the Permanent Representative of Qatar to the United Nations Office at Geneva, suggesting that he seek ways to reconcile opposed viewpoints while avoiding undue declarations to the press. He regrets that, so far, efforts undertaken within his mandate through quiet diplomacy to favour a positive evolution of the issue between source and target countries of the sanctions have not achieved any progress. The Special Rapporteur, having indicated since the outset his availability and willingness to conduct a mission to Qatar to assess the human rights impact of the measures, has recently received an official invitation from the Government of Qatar to conduct a visit in that country.

Russian Federation

10. In his latest report to the Human Rights Council (A/HRC/39/54), the Special Rapporteur addressed the additional extraterritorial sanctions on the Russian Federation announced in April 2018 by the United States,[10] designating seven Russian "oligarchs" and "12 companies they own or control", as well as 17 senior Russian government officials and a State-owned Russian weapons trading company and its subsidiary, a Russian bank.[11] These sanctions are widely believed to jeopardize the prospects of Nord Stream 2, the €9.5 billion gas pipeline project from the Russian Federation to Germany, owing to the probable difficulties that the project will face in obtaining adequate financing from Western banks.[12] The Special Rapporteur has also drawn attention to the case of Rusal, a Russian company, which is the world's biggest aluminium producer outside China, recently added by the United States to its Specially Designated Nationals and Blocked Persons List.[13] The sanctions are likely to adversely affect the daily life of nearly 100,000 innocent people employed by Rusal across its international operations and offices in several countries and not only in the Russian Federation, as well as of tens of thousands who depend on those jobs.

Sudan

11. The Special Rapporteur has welcomed the confirmed termination of the remaining United States sanctions on the Sudan, previously applied under Executive Orders 13067 and 13412, which were formally revoked in October 2017. He underlines that his mandate and that of the Independent Expert on the situation of human rights in the Sudan contributed through quiet diplomacy to the lifting of sanctions, as stressed by the Government of the Sudan in a letter dated 20 January 2017 addressed to the Special Rapporteur.

[9] A/72/370, paras. 16–18.

[10] For an overview and analysis of the measures currently in force against the Russian Federation, see A/HRC/36/44/Add.1.

[11] United States Department of the Treasury, "Treasury designates Russian oligarchs, officials, and entities in response to worldwide malign activity", 6 April 2018. Available at https://home.treasury.gov/news/featured-stories/treasury-designates-russian-oligarchs-officials-and-entities-in-response-to.

[12] Mathias Brüggmann, Moritz Koch and Torsten Riecke, "US sanctions on Russia hit Nord Stream 2 gas line, European companies", *Handelsblatt*, 11 April 2018.

[13] Polina Devitt and Dmitry Zhdannikov, "Exclusive: Rusal seeks sanctions relief via board changes, exports at risk if plan fails — sources", Reuters, 27 April 2018.

Bolivarian Republic of Venezuela

12. The Bolivarian Republic of Venezuela continues to be subjected to a series of sanctions programmes enacted by the United States, the European Union, Canada, Switzerland and Panama. The Government of the Bolivarian Republic of Venezuela has circulated documentation regarding the negative impact of these measures. It has highlighted in particular the additional measures imposed under Executive Order 13808, signed on 24 August 2017 by the President of the United States, which targets the State-owned oil industry corporation Petróleos de Venezuela through restrictions on negotiation of new debt issued by the Government or the corporation. According to the country, "this translates into serious consequences for the Venezuelan financial system, closing the possibility of issuing and negotiating optimally new debt, which may lead to the breach of the obligations internationally incurred by the Republic, placing the assets that are outside the national territory at serious risk, which potentially can be subject to embargo and executed for the forced and anticipated fulfilment of the obligations contracted by the country".[14] The Government claims that the 22 sets of coercive measures against the country, taken together, amount to "economic blockade" which affects the enjoyment of human rights of the population.

Zimbabwe

13. The orderly change of power from the then President Robert Mugabe in Zimbabwe in November 2017 gave the Special Rapporteur an opportunity to call upon the international community, along with the Independent Expert on the promotion of a democratic and equitable international order, to respond by lifting sanctions on the country. While he welcomed the emergence of a new era, which must be based on democracy and the rule of law, the Special Rapporteur stressed that such change could not happen "under the shadow of economic coercion".[15] He noted that sanctions had been in place since the early part of the twenty-first century and had led only to the suffering of ordinary people rather than bringing about political change. It was time for political dialogue and the restoration of a functioning economy. The human rights of ordinary Zimbabweans suffered greatly from the consequences of sanctions. The sanctions could not be said to be "limited" or "targeted", as the people and companies affected represented the vast majority of the economy. It had been observed that some businesses were currently "overcomplying" with the sanctions because of confusion over their scope.[16]

State of Palestine

14. On 17 April 2018, the Special Rapporteur issued a joint statement with the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The special procedures mandate holders echoed the United Nations and the International Criminal Court, which have expressed grave concern about the use of force by the Israeli security forces in previous weeks which led to the killing and wounding of dozens of mostly unarmed protesters in the Gaza Strip. On that occasion,

[14] Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations Office and other international organizations in Geneva, "On the economic war and unilateral coercive measures against the Bolivarian Republic of Venezuela", 12 July 2018.

[15] OHCHR, "Zimbabwe sanctions should end to boost post-Mugabe economy, UN experts urge", 27 November 2017.

[16] Ibid.

the mandate holders called for "an immediate end to the 11-year-old comprehensive blockade on Gaza, which is imposing untold suffering on the population". They added, "We cannot continue to ignore this collective punishment of the people of Gaza, and the undeniable human rights impacts of the blockade. ... Collective punishment is prohibited under international law, and there must be international accountability for such actions."[17]

III. Issues of discrimination (and non-discrimination) in relation to unilateral sanctions

15. In the present report, the Special Rapporteur underlines a paradox that has come to light in the course of his investigations and research activities related to his mandate. That paradox lies in the fact that sanctions, at least sanctions of a certain type in determined cases, have the potential to, and in certain instances actually do, harm human rights — and contravene principles of humanitarian law — in a twofold, and apparently antithetical, manner: they unlawfully fail to discriminate and, from a different perspective, at the same time unlawfully discriminate. To explain the basic line of reasoning in the present section, international sanctions often fail to discriminate between combatants and civilians (and between civilian objects and military objectives), as they would be expected to do under the basic requirements of international humanitarian law. At the same time, unilateral sanctions may unlawfully discriminate against persons on the mere basis of their nationality, national origin or place of residence. The Special Rapporteur stresses that the recognition of this paradox is not a mere theoretical, or doctrinal, exercise, since it potentially has far-reaching practical consequences and gives further weight to previous recommendations formulated from the mandate, and supports the additional recommendations submitted in the present report.

A. Sanctions and the requirement of discrimination under international humanitarian law

Relevance of international humanitarian law to the evaluation of sanctions

16. As the Special Rapporteur has previously stated, the core rules of international humanitarian law (law of armed conflict) may be of relevance in cases of unilateral coercive measures affecting basic human rights or the civilian population at large.[18] However, conceptual difficulties may arise, as the normative understanding of international humanitarian law is that it governs State conduct only during an armed

[17] Office of the United Nations High Commissioner for Human Rights (OHCHR), "UN human rights experts condemn killings of Palestinians near Gaza fence by Israeli security forces", 17 April 2018.

[18] See A/71/287, para. 28, and A/HRC/30/45. Similarly, OHCHR has stated that humanitarian law provisions, such as the prohibition against the starvation of a civilian population as a method of warfare and the obligation to permit the free passage of all consignments of essential foodstuffs and medical supplies, are crucial for the evaluation of economic coercive measures (see A/HRC/19/33).

conflict.[19] This is apparent from the provisions of the Geneva Conventions and the Additional Protocols, which recognize this contextual limitation. From that normative understanding, international humanitarian law "would only serve as a legal framework for understanding the use and limits of economic sanctions when sanctions are used during an armed conflict".[20]

17. However, it has been argued that international humanitarian law "serves as the most appropriate paradigm through which economic sanctions should be governed, even when implemented outside the armed conflict context".[21] This view may be grounded in various arguments. First, it is obvious that damages, particularly collateral damages, may be caused by non-military coercive instruments such as economic sanctions, in the same way as by military action. This may call for the application of international humanitarian law in order to suppress what has been called a "persistent blind spot in international legal analysis".[22] Second, it has been stressed that the rules of international humanitarian law "constitute, at minimum, the lowest threshold that economic sanctions must meet. This accords consistency with the principle of *argumento a majore ad minus*, which demands that what is considered the minimum standard applicable in armed conflict, also applies during peacetime".[23] Third, it was observed that:

> Economic sanctions, as tools generally employed when tensions arise between States, are best situated in the context of [international humanitarian law]. In the spectrum of international relations, extending between peaceful relations and armed conflict, both the purpose and effect of sanctions makes them appear similar to acts of conflict and thus closer to the latter end of that spectrum. Sanctions are by definition coercive tools applied when normal diplomatic relations either break down or are deemed futile. They are often accompanied by threats of additional sanctions or even the use of force. They are designed to compel the targeted State to comply with the demands of the international community or the sanctioning State(s). In employing such pressure, sanctions place a significant toll on those inside the targeted State. In light of these characteristics, it is axiomatic that economic sanctions are employed when there exists a crisis or conflict serious enough to warrant such intervention.[24]

18. Therefore, economic sanctions would call for the application of international humanitarian law as "the ultimate reference in situations of crisis and conflict".[25]

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[19] The concept of armed conflict used in the Geneva Conventions and other instruments of international humanitarian law has been clarified by the jurisprudence of international courts and tribunals and legal doctrine. International armed conflicts involve the use of (military) force between States, whereas non-international armed conflicts involve the use of such force between a State's armed forces and a non-governmental armed group or groups or between such armed groups. For a non-international armed confrontation to be considered an armed conflict, the hostilities must reach a minimum level of intensity and the parties involved in the conflict must possess a minimum of organization. See generally Dietrich Schindler, "The different types of armed conflicts according to the Geneva Conventions and Protocols", *Collected Courses of the Hague Academy of International Law*, vol. 163 (1979).

[20] Nema Milaninia, "*Jus ad bellum economicum* and *jus in bello economico*: the limits of economic sanctions under the paradigm of international humanitarian law", in *Economic Sanctions under International Law*, Ali Z. Marossi and Marisa R. Bassett, eds. (The Hague, T.M.C. Asser Press, 2015), pp. 95–124, at p. 97.

[21] Ibid., p. 98.

[22] W. Michael Reisman and Douglas L. Stevick, "The applicability of international law standards to United Nations economic sanctions programmes", *European Journal of International Law*, vol. 9, No. 1 (1998), pp. 86–141, at p. 95.

[23] Milaninia, "*Jus ad bellum economicum* and *jus in bello economico*", pp. 102–103.

[24] Ibid.

[25] Ibid.

19. There have been a number of official statements to the effect that economic sanctions should abide by the rules of international humanitarian law.[26] In 1995, for example, the five permanent members of the Security Council, in a non-paper on the humanitarian impact of sanctions (S/1995/300, annex), stated that "future sanctions regime[s] should be directed to minimize unintended adverse side effects of sanctions on the most vulnerable segments of targeted countries" and that "the short- and long-term humanitarian consequences of sanctions" should be factored into designing such programmes. An analysis of the practice of the Security Council gives weight to the idea that the Council accepts that it is bound to observe humanitarian limits in its application of sanctions.[27] In his 1999 report on the work of the United Nations (A/54/1), the then Secretary-General Kofi Annan similarly noted:

> It is increasingly accepted that the design and implementation of sanctions mandated by the Security Council need to be improved, and their humanitarian costs to civilian populations reduced as far as possible. This can be achieved by more selective targeting of sanctions, as proponents of so-called "smart sanctions" have urged, or by incorporating appropriate and carefully thought through humanitarian exceptions directly in Security Council resolutions.

20. An argument may also be made that, following the reasoning used by the International Court of Justice in the *Corfu Channel* case[28] and in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*,[29] "the obligation to provide essential goods and foodstuffs contained in the Geneva Conventions and Additional Protocols and applicable in time of war applies also in peacetime, since the obligations do not derive only from the Conventions themselves but from the general principles of humanitarian law to which the Conventions merely give specific expression".[30]

21. In the light of all these elements, it is reasonable to argue, as a number of scholars have done, that international humanitarian law, or at least principles derived from that body of law, should apply to the imposition of economic sanctions by States acting both unilaterally and under the authorization of the Security Council, even during peacetime.[31] Arguing that those criteria found in the law of armed conflict are not applicable (at least mutatis mutandis) to economic sanctions (especially those amounting to de facto blockades) would lead to an absurd, unacceptable outcome, as civilians would then be deprived in peacetime of the protection offered in wartime by international humanitarian law against the very same kinds of measures.

Rules derived from international humanitarian law applicable to sanctions

22. The principle of distinction, one of the core principles of international humanitarian law, requires States to distinguish between combatants and military objectives on the one hand, and non-combatants and civilian objects on the other, and to direct their attacks only against the former.[32] Any use of force must be

[26] Ibid.

[27] Mary Ellen O'Connell, "Debating the law of sanctions", *European Journal of International Law*, vol. 13, No. 1 (2002), pp. 63–79, at p. 74.

[28] *I.C.J. Reports 1949*, pp. 22–23.

[29] *I.C.J. Reports 1986*, p. 114.

[30] Anna Segall, "Economic sanctions: legal and policy constraints", *International Review of the Red Cross*, vol. 81, No. 836 (December 1999), pp. 763–784.

[31] See A/71/287.

[32] Christopher Greenwood, "Historical development and legal basis", in *The Handbook of International Humanitarian Law*, 2nd ed., Dieter Fleck, ed. (Oxford, Oxford University Press, 2008), p. 37.

demonstrably necessary, proportional to the necessity and capable of discriminating between combatants and non-combatants.[33]

23. The principle of distinction aims to ensure the protection of the civilian population in situations of international armed conflicts. The scope of this protection is set forth, for example, in the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), adopted in 1977, article 51 of which provides that the civilian population "shall enjoy general protection against dangers arising from military operations" and that the civilian population "shall not be the object of attack". The same provision prohibits "indiscriminate attacks", defined as:

(a) Those which are not directed at a specific military objective;

(b) Those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) Those which employ a method or means of combat the effects of which cannot be limited as required by the Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

24. Attacks against the civilian population or civilians by way of reprisals are prohibited.[34] Finally, civilian objects, that is, those which are not military objectives, shall not be exposed to attack or to reprisals.[35]

25. When evaluated against the rules of international humanitarian law, sanctions would qualify as unlawful action if indiscriminate and failing to distinguish combatants from non-combatants and civilians, which is actually the case both in certain situations of sanctions applied in wartime and in peacetime, as explained below.

Economic sanctions applied in connection with military operations in the course of an armed conflict

26. When sanctions are imposed in the context of an armed conflict (whether international or internal), general rules on the protection of civilians against the effects of military operations fully apply. Thus, the decision to impose such measures must take international humanitarian law standards into account, in particular the rules relating to medical and food supplies to different categories of protected persons.[36]

27. These rules include the prohibition on starvation of the civilian population, and the right to humanitarian assistance, through the free passage of medical and hospital consignments and objects necessary for religious worship intended only for the civilian population, and of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases.[37]

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[33] Knut Ipsen, "Combatants and non-combatants", in *The Handbook of International Humanitarian Law*, 2nd ed., Dieter Fleck, ed. (Oxford, Oxford University Press, 2008). See also Reisman and Stevick, "The applicability of international law standards", p. 94.

[34] Protocol I, art. 51.

[35] Ibid., art. 52.

[36] Segall, "Economic sanctions".

[37] Ibid.

28. The same principles of freedom of passage of relief supplies shall apply to situations of naval blockades,[38] as well as to occupied territory.[39] The occupying Power is under a duty to ensure that the civilian population receives food and medical supplies, and an obligation to accept and facilitate relief operations on behalf of the said population if the whole or part of the population is inadequately supplied. Moreover, all States parties shall permit the free passage of these consignments and shall guarantee their protection. This means that relief consignments for the population of an occupied territory must be allowed to pass through the blockade, and this obligation is further accompanied by an obligation to guarantee their protection. Thus, all States concerned must respect the consignments and protect them when they are exposed to danger through military operations.[40]

29. It behoves the international community to ascertain that actual situations of unilateral economic sanctions such as those which have occurred in recent international armed conflicts shall be tested against the rules of international humanitarian law set forth above.

30. The severe financial and economic blockade imposed on the Gaza Strip, the consequences of which have been repeatedly documented, has induced a catastrophic humanitarian situation in which multiple breaches of rules of international humanitarian law can be identified.[41] The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has found the blockade to constitute "collective punishment of the people of Gaza, contrary to article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)".[42]

31. The blockade imposed on Yemen in connection with the military operations of the coalition, including the siege and blockade of the Hudaydah port, which impeded the entry of relief supplies to millions of civilians in urgent need of humanitarian assistance, was another case in point. The Special Rapporteur has already deplored the unwarranted restrictions on the flow of commercial and humanitarian goods and services into Yemen, involving a variety of regulatory measures enforced by the coalition forces, including unreasonable delay and/or denial of entry to vessels in Yemeni ports. He also wishes to reiterate and emphasize the finding of the United Nations Development Programme Country Director in Yemen, who stated on 1 August 2017 that "the current food security crisis is a man-made disaster not only resulting from decades of poverty and underinvestment, but also as a war tactic through economic strangulation".[43]

32. The economic sanctions imposed since 2011 on the Syrian Arab Republic have been reported as having seriously impaired the ability of Syrian civilians to earn a living, in addition to the ongoing hostilities.[44] The Special Rapporteur noted in the outcome statement of his visit to the Syrian Arab Republic in May 2018 that, because of their comprehensive nature, the sanctions enforced against the country have had a devastating impact on the entire economy and the daily lives of ordinary people. That impact has compounded their suffering resulting from the devastating crisis that has unfolded since 2011. He observed that the sufferings imposed by the sanctions have reinforced those caused by the conflict. Indeed, it seems ironic that these measures applied by source States and extended for another year in June 2018 out of a concern

[38] Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 23, cited in Segall, "Economic sanctions".

[39] Fourth Geneva Convention, art. 59.

[40] Segall, "Economic sanctions".

[41] A/72/370, para. 12.

[42] See A/70/392.

[43] A/72/370, paras. 31–32.

[44] See A/71/287 and A/HRC/31/68.

for human rights are actually contributing to the worsening of the humanitarian crisis as an unintended consequence.

Economic sanctions applied in peacetime

33. The Special Rapporteur again stresses that, where unilateral coercive measures are applicable outside armed conflict, the relevant provisions of international humanitarian law remain applicable in evaluating the admissibility of those measures.[45] If, as mentioned above, the safeguards of international humanitarian law have been established primarily to protect the civilian population against the effects of military operations in an armed conflict, it remains that there is no valid reason why these safeguards should not apply to economic sanctions imposed outside an armed conflict.[46]

34. De facto blockades imposed as a result of measures aimed at the "economic isolation" of the target country, through restrictions or prohibitions of imports and exports abroad and transfers of goods between the target and the rest of the world, arguably entail some form of prohibited "collective punishment" and cannot be justified under the rules of international humanitarian law.

35. In addition, in cases where medical equipment, medicines and other items necessary to meet basic human rights, which are theoretically exempt from restrictive measures, are in reality unavailable because of restrictions on financial transfers and payments, it may be thought that the ensuing situation amounts to unlawful blockade, or is comparable to collective reprisals, which are banned under humanitarian law.[47]

36. The Special Rapporteur considers that, notwithstanding the legal intricacies and technicalities related to the scope of application of the Geneva Conventions and related instruments, legal rights holders in target countries where the negative impact of such measures is particularly acute could be considered as in a war zone. They would thus be entitled to benefit from the protection of humanitarian law, which has the advantage of being neutral, while the context of unilateral coercive measures is very heavily charged politically. When payments and financial flows are affected by de facto bans on the use of international telecommunications payment mechanisms, independent procurement agencies of third countries could be involved in providing humanitarian supplies in peacetime for target countries.[48]

B. Sanctions and the prohibition of discrimination under human rights law

37. In his report to the Human Rights Council at its thirty-ninth session, the Special Rapporteur has underlined that there exist strong legal arguments that sanctions may have a discriminating effect on the basis of the country of residence, or nationality, of the targeted populations. This is, the Special Rapporteur believes, a point of extreme importance, which unfortunately has been largely overlooked. If one considers the practical effects of comprehensive embargoes used in conjunction with secondary sanctions aimed at the "economic isolation" of the population of the target State, it is possible and reasonable to view these effects as amounting to a massive discrimination based on nationality, national origin or place of residence. A case at

[45] See A/71/287.

[46] Hans-Peter Gasser, "Collective economic sanctions and international humanitarian law: an enforcement measure under the United Nations Charter and the right of civilians to immunity — an unavoidable clash of policy goals?", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 56 (1996), pp. 871–904, at p. 885.

[47] A/HRC/30/45, para. 42.

[48] Ibid.

hand is that of the United States unilateral comprehensive measures targeting the Islamic Republic of Iran, under which Iranian people, living either in the country or abroad, are de facto deprived of the opportunity of conducting normal business (and other) relations with foreign counterparts.

38. That situation is all the more controversial given that the overwhelming majority of affected persons in this case are not "blacklisted" individuals, persons engaged in illicit activities or objectionable behaviour, or even State officials targeted on the grounds of their belonging to the State apparatus of a targeted regime, but members of the civilian population at large, which bears no responsibility for the dispute. It is the place to recall the observation made by the Committee on Economic, Social and Cultural Rights in paragraph 16 of its general comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights, that the inhabitants of a given country do not forfeit basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms of international peace and security.

Prohibition of discrimination in international law and national legislation

39. The prohibition of discrimination is enshrined in the Charter of the United Nations, Article 1 of which describes one of the four purposes of the Organization as "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion", as well as in a number of human rights instruments, to which the main sanctions users are parties. Discrimination based on nationality or national origin violates, inter alia, article 26 of the International Covenant on Civil and Political Rights and articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination. Article 1 of the latter instrument defines "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".[49] Most national legal systems of the world reflect such inadmissibility of discrimination as a basic rule of protection of human rights, mirroring the requirement of equality before the law.

40. From the viewpoint of international economic law, nationwide economic sanctions can be said to contradict some of the key principles underlying the multilateral trading system, including the principle of non-discrimination, which is expressed in most-favoured-nation treatment and national treatment clauses, embodied in the General Agreement on Tariffs and Trade, the General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property Rights and various other agreements of the World Trade Organization (WTO). Although WTO member States could still argue that sanctions, despite their discriminatory effects, are lawful derogations from the States' WTO obligations, relying on "security exceptions" in accordance with article XXI of the General Agreement on Tariffs and Trade, the Special Rapporteur believes, as he stressed in a previous report, that this provision is not self-adjudicating and should be reviewed on an ad hoc basis by the WTO dispute settlement mechanisms.[50]

[49] See generally E. W. Vierdag, *The Concept of Discrimination in International Law* (The Hague, Martinus Nijhoff, 1973).

[50] A/HRC/33/48, para. 30.

Legal remedies against discriminatory measures

International forums

41. Subject to the fulfilment of applicable jurisdictional requirements in each particular case, victims of discrimination may be entitled to bring legal challenges before international courts or tribunals, or human rights bodies such as the Committee on the Elimination of Racial Discrimination. The Special Rapporteur has already referred, in his report to the Human Rights Council at its thirty-ninth session, to the initiation by Qatar of contentious proceedings before the International Court of Justice,[51] based on alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination through the imposition of unilateral coercive measures on Qatar by several countries. The Court, as the principal judicial organ of the United Nations, is thereby given a unique opportunity to clarify in general the legal issues related to the practice of sanctions under international law (including international human rights law), in particular this very issue of the discriminatory effect of comprehensive sanctions and embargoes.

Domestic challenges

42. Legal challenges to sanctions based on the invocation of their discriminatory nature have been witnessed in past years. To give only one example, in the United Kingdom of Great Britain and Northern Ireland, a number of Iranians and persons of Iranian descent brought a series of legal proceedings against several banks, arguing that they had been subjected to racial discrimination by the banks, in breach of the provisions of the Equality Act 2010, after their bank accounts had been closed.[52] It was reported that compensation had been obtained by claimants in most of those cases, often as a result of pretrial settlements, but it is difficult to obtain reliable and exhaustive data on those proceedings.

43. It is unlawful under various (national) legal systems to participate in "boycotts" not decided upon by the competent authorities of the State concerned, and such prohibitions usually equally apply to any comprehensive economic sanctions and embargoes. Thus, in Germany, section 7 of the German Foreign Trade and Payments Ordinance provides that issuing a declaration in foreign trade and payment transactions whereby a resident participates in a boycott against another country is prohibited. In France, boycott clauses in contractual documents are also unlawful. To the extent that these clauses require a person to engage in discrimination not based on a valid law or regulation enacted by the State, these fall within the scope of articles 225-1 and 225-2 of the French Criminal Code on the offence of discrimination.[53] The rationale behind the provision in the German Ordinance appears to be the protection of trade relations between Germany and other States, whereas in France the prohibition is based on the fact that discrimination is a violation of human rights. Similar legal rules may exist in other countries, and further comprehensive research may be needed to assess this point.

[51] See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*. Qatar submitted its application instituting proceedings on 11 June 2018. From 27 to 29 June 2018, the Court held hearings on the request for the indication of provisional measures submitted by Qatar.

[52] Saeed Kamali Dehghan, "Iranians sue UK banks over closed accounts, claiming racial discrimination", *The Guardian*, 28 March 2014.

[53] France, Directorate General of the Treasury, "Guide de bonne conduite/foire aux questions relatifs à la mise en œuvre des sanctions économiques et financières" (Guide to good practices/frequently asked questions relating to the implementation of economic and financial sanctions), version 3, 15 June 2016.

44. In the Netherlands, in past years some Iranian students were prevented from enrolling in universities for "sensitive" fields of study (such as nuclear physics) as a result of the sanctions in force that claimed to prevent nuclear proliferation. In certain cases, it was reported that legal challenges to such measures had been brought before domestic courts. The Government of the Netherlands has clarified that such "knowledge embargo" against the Islamic Republic of Iran was abolished in July 2015, under the terms of Security Council resolution 2231 (2015), in which the Council endorsed the Joint Comprehensive Plan of Action, concluded on 14 July 2015 between the Islamic Republic of Iran and China, France, Germany, the Russian Federation, the United Kingdom and the United States (E3+3). This change of policy has applied since 16 January 2016. However, a "knowledge embargo" applying to students from the Democratic People's Republic of Korea, based on the North Korea Sanctions Order 2017 adopted by the Netherlands in furtherance of Security Council resolution 1874 (2009), continues to apply.[54]

IV. The issue of the right to reparations

45. To the extent that the rules of international humanitarian law may come into play with respect to unilateral coercive measures, as has been suggested above, remedies generally (or potentially) available to victims of violations of the law of armed conflict may also be relevant to the situation of persons subject to sanctions. The Special Rapporteur has previously reflected on the right to a remedy for victims of violations of international humanitarian law,[55] as recognized, inter alia, by the Commission on Human Rights and the General Assembly in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[56] It would be paradoxical that victims of collective punishment, or of starvation-like measures, would have access to some form of remedies if the measures at issue were implemented in the course of an armed conflict, and would be deprived of such remedies for the same measures used in peacetime.

46. The Special Rapporteur also notes that the outcome of the ongoing proceedings before the International Court of Justice in the case of *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* may have a tremendous impact on the legal situation of victims of human rights violations flowing from the implementation of unilateral sanctions. Should the Court find that unilateral coercive measures may entail, at least under certain conditions, violations of the Convention, it would confirm the possibility open to affected parties of bringing claims under the mechanisms set up under the Convention. In particular, the Committee on the Elimination of Racial Discrimination may consider individual complaints that allege a violation of an individual's rights under the Convention if the State party concerned has made the necessary declaration under article 14 thereof. The Convention also provides a mechanism for inter-State claims, whereby States have the possibility of bringing complaints of violations of the Convention committed by another State, through the establishment of an ad hoc Conciliation Commission.[57] Should the competence of the Committee on the Elimination of Racial Discrimination to address unilateral coercive measures be confirmed, which the Special Rapporteur believes is the correct legal position, this may be a means to satisfy, at least partially,

[54] Netherlands, Ministry of Education, Culture and Science, "Exemption certain engineering or nuclear-related courses of study".

[55] See A/71/287, para. 29.

[56] Liesbeth Zegveld, "Remedies for victims of violations of international humanitarian law", *International Review of the Red Cross*, vol. 85, No. 851 (September 2003), pp. 497–526.

[57] Arts. 11–13. See www.ohchr.org/en/hrbodies/tbpetitions/Pages/IndividualCommunications.aspx.

the need expressed by the Human Rights Council, in paragraph 15 of its resolution 34/13, for an independent mechanism of the United Nations human rights machinery for the victims of unilateral coercive measure to address the issues of remedies and redress, with a view to promoting accountability and reparations.

47. Article 22 of the Convention also incorporates a dispute settlement provision under which "any dispute between two or more States parties with respect to the interpretation or application of [the] Convention, which is not settled by negotiation or by the procedures expressly provided for in [the] Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement". This opens the possibility for States targeted by sanctions to challenge these measures before the Court as discriminatory in the meaning of the Convention, and to seek compensation for the damage suffered. It should be noted, however, that several States (including a State with a significant track record in the use of unilateral sanctions) have made reservations to the jurisdiction of the Court to hear disputes arising from the Convention, when signing or acceding to it.

V. The lawfulness (or unlawfulness) of sanctions under public international law and international human rights law: a recommendation for the submission of the issue to the International Court of Justice

48. The Special Rapporteur has already suggested that Member States concerned should consider submitting to the International Court of Justice, pursuant to Article 96 of the Charter of the United Nations, a request for an advisory opinion on the legality or otherwise of the unilateral coercive measures, especially under the angle of their compliance or otherwise with human rights norms.[58] Such an advisory opinion, even if not binding stricto sensu, would be of significance to the international community at large, given that unilateral sanctions increasingly affect States and their populations and have a significant impact on human rights and the international legal order, including the multilateral trading system. The Court could draw on relevant parts of its established jurisprudence, especially on the prohibition of intervention in international law. One relevant obiter dictum on that issue was formulated by Judge Alvarez in the *Corfu Channel* case, that:

> The intervention of a State in the internal or external affairs of another — i.e., action taken by a State with a view to compelling another State to do, or to refrain from doing, certain things — has long been condemned. It is expressly forbidden by the Charter of the United Nations. The same applies to other acts of force, and even to a threat of force.[59]

49. The Court may also be expected to apply to international sanctions applied in peacetime its findings in the same *Corfu Channel* case, regarding obligations of States "based ... on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war".[60] The Court could also find inspiration in its rich case law on human rights matters. To the extent that comprehensive unilateral sanctions would be found to be in violation of the prohibition of discrimination, the Court could restate the opinion of Judge Tanaka in

[58] A/HRC/33/48, paras. 24–26.

[59] *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), Judgment of 9 April 1949, Individual Opinion by Judge Alvarez, I.C.J. Reports 1949*, p. 47.

[60] *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), Judgment of 9 April 1949, I.C.J. Reports 1949*, p. 22.

the *South West Africa* cases, that "the principle of equality being in the nature of natural law and therefore of a supra-constitutional character, is placed at the summit of hierarchy of the system of law, and that all positive laws including the constitution shall be in conformity with this principle".[61]

50. For the General Assembly to take a decision to submit a request for an advisory opinion to the International Court of Justice, a resolution adopted by a simple majority vote appears to be sufficient.[62] On a practical level, it is recommended that concerned States submit (jointly if possible) to the United Nations (through the Office of the Secretary-General) a request, in accordance with rule 14 of the rules of procedure of the General Assembly, for inclusion in the agenda of the seventy-third session of the Assembly, under heading F, Promotion of justice and international law, of a supplementary item entitled "Request for an advisory opinion of the International Court of Justice on whether unilateral sanctions are in accordance with international law", with subsequent consideration of the item directly in plenary meeting. A draft explanatory memorandum, to be submitted in accordance with rule 20 of the rules of procedure, is annexed to the present report and could serve as a basis for discussions among the States concerned.

51. As regards the formulation of the question or questions that would form the request for an advisory opinion, the Special Rapporteur believes that its precise wording should be carefully drafted by a group of experts from concerned States. The Special Rapporteur would be prepared and willing to extend his assistance to the group, should it be set up by concerned States, in order to reach consensus and thus be in a position to submit the request at the earliest possible date. It is probably desirable that the question or questions to be put to the Court focus on the most widely accepted common ground regarding unilateral coercive measures. It could perhaps single out the legality of sanctions regimes that claim extraterritorial application (secondary sanctions) and have adverse effects on non-parties. The right to compensation for third parties adversely affected by sanctions should also be part of the question or questions raised. The annex to the present report is an example of such a request and can form the basis for discussion on this topic.

VI. Conclusions and recommendations

52. **The Special Rapporteur calls upon States to affirm and state clearly that unilateral sanctions, especially those of a comprehensive nature, in particular when aggravated by secondary sanctions seeking the "economic isolation" of the target country, amount to discrimination against the innocent population of the country concerned, in violation of the prohibition of discrimination enshrined in the main international human rights instruments including, but not limited to, the International Convention on the Elimination of All Forms of Racial Discrimination. This is not a partisan statement, but rather a legally correct understanding of the meaning of discrimination in accordance with the human rights instruments concerned, including the aforementioned Convention. The Special Rapporteur would like to see the Committee on the Elimination of Racial Discrimination, as the body entrusted with the interpretation of the content of human rights provisions of the Convention, affirm this understanding through a general recommendation (or a general comment) on sanctions as discriminatory measures under the Convention.**

[61] *South West Africa (Liberia v. South Africa), Judgment of 18 July 1966, Dissenting Opinion of Judge Tanaka, I.C.J. Reports 1966*, p. 306.

[62] A/HRC/33/48, paras. 24–26.

53. The Special Rapporteur reiterates his suggestion that the International Law Commission resume its work on "extraterritorial jurisdiction", initiated in 2006.[63] The Commission could be called upon to elaborate on, inter alia, the legal status and consequences of sanctions involving the unlawful assertion of jurisdiction by a source State or group of States on target States and a fortiori on third States.

54. The Special Rapporteur has also suggested, in his latest report to the Human Rights Council, the appointment by the Secretary-General of a special representative on unilateral coercive measures (or alternatively several special representatives, each in charge of a specific country sanctions regime, as appropriate). The mandate of a special representative on unilateral sanctions could encompass advocacy of respect for international law in matters related to unilateral coercive measures, the negotiation of relief measures, alleviation of the most indiscriminate measures and, ultimately, consensus promotion of the removal of unilateral sanctions at large. These issues clearly extend beyond the mandate of the Special Rapporteur, which is focused on the protection of human rights affected by sanctions. The Special Rapporteur could interact with the Special Representative on sanctions as appropriate.

55. Finally, in the current context of escalation in the use of unilateral sanctions and the reimposition of comprehensive embargoes merging through secondary sanctions into indiscriminate de facto blockades, it appears all the more relevant to consider establishing a consolidated central register at the level of the United Nations Secretariat to recapitulate the list of all unilateral sanctions in force.[64]

56. The Special Rapporteur has already recommended that States Members of the United Nations restate a set of basic principles to mitigate the adverse human rights effects of unilateral coercive measures, pending their complete elimination. In his latest report to the Human Rights Council, he has elaborated on two aspects of these basic principles, which he submits to States for consideration: (a) that the effects of sanctions regimes should be assessed (as a mandatory requirement) by means of human rights impact assessments, before the measures are implemented and as long as they remain in force; and (b) that the absence of effective mechanisms of judicial review of unilateral sanctions amounts to the violation of the right to a fair trial, and as such qualifies as a denial of justice, which is considered unlawful under virtually all legal systems of the world.

[63] See A/61/10, annex E, and A/72/370, para. 58.

[64] Draft elements on the United Nations register of unilateral sanctions likely to have a human rights impact have been appended to the previous report of the Special Rapporteur (A/HRC/36/44, appendix I) as a possible basis for multilateral negotiations aimed at the establishment of such a register.

Annex

Explanatory memorandum

1. The General Assembly has many times expressed its concerns about the adverse human rights impact of unilateral coercive measures, including in its most recent resolutions on this subject, namely resolutions 70/151, 71/193 and 72/168. The same concerns have been echoed in numerous resolutions of the Human Rights Council and the Commission on Human Rights, as well as in the forum of regional organizations, and by a majority of States Members of the United Nations. At the same time, the Assembly has repeatedly stressed that unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States. It has urged all States to cease adopting or implementing any unilateral measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, in particular those of a coercive nature, with all their extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development (see resolution 72/168).

2. The General Assembly has underlined that, despite the recommendations adopted on this question by the Assembly, the Human Rights Council, the Commission on Human Rights and recent major United Nations conferences, and contrary to general international law and the Charter, unilateral coercive measures continue to be promulgated and implemented, with all their negative implications for the social humanitarian activities and economic and social development of developing countries, including their extraterritorial effects, thereby creating additional obstacles to the full enjoyment of all human rights by peoples and individuals under the jurisdiction of other States (ibid.). In other words, despite all these resolutions and statements reflecting the beliefs and *opinio juris* of the overwhelming majority of the international community, certain Powers continue to use unilateral sanctions as tools for applying political or economic pressure against certain countries, in particular developing countries. This has led to a stalemate in the international community, where a handful of States that frequently use sanctions resist the views of the majority and assert that it is legitimate to use unilateral coercive measures for certain purposes.

3. It is believed that the most principled and sensible way to overcome conflicting views regarding the admissibility under international law, including human rights law and international humanitarian law, of unilateral coercive measures with special reference to those having an egregious human rights impact on innocent civilians, is to transfer the issue from the political to the juridical arena.

4. The [concerned countries] consider that the General Assembly, in view of the powers and functions conferred on it by the Charter of the United Nations, in particular by Articles 10, 13 and 96, has a crucial role to play in this regard.

5. The [concerned countries] believe that an advisory opinion of the principal judicial organ of the United Nations, the International Court of Justice, would be particularly appropriate to determine whether unilateral coercive measures as implemented and enforced by certain Powers are in accordance with international law.

6. All States Members of the United Nations would benefit from the legal guidance of an impartial advisory opinion of the International Court of Justice. It would enable them to evaluate the legal consequences arising from the continued application and

enforcement of unilateral coercive measures, and their own duties and responsibilities in respect of this situation.

7. It is believed that requesting the Court to clarify those legal issues would contribute to strengthening the rule of law in international relations.

8. Finally, an advisory opinion of the International Court of Justice would contribute to reducing international tensions raised by unilateral sanctions and alleviating the sufferings of affected persons and groups, promote accountability and facilitate efforts aimed at dialogue and international understanding.

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Item 71 (a) of the preliminary list*
Rights of indigenous peoples

Rights of indigenous peoples

Note by the Secretary-General

The Secretary-General has the honour to transmit the report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, submitted in accordance with Human Rights Council resolution 33/12.

* A/73/50.

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Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples

Summary

The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Human Rights Council resolution 33/12. In the report, the Special Rapporteur provides a summary of her activities since her previous report to the Assembly and an introductory comment on the issue of indigenous peoples and self-governance.

In the section on activities, the Special Rapporteur highlights recent thematic work on topics relating to criminalization; consultation and free, prior and informed consent; indigenous peoples in isolation and initial contact; country visits; communications; and other activities. In the section on indigenous peoples and self-governance, she reviews examples of indigenous governance systems documented by the mandate holder and highlights some of the positive outcomes achieved in terms of sustainable development.

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I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Human Rights Council resolution 33/12.

2. In the report, the Special Rapporteur first provides a summary of her activities since her previous report to the Assembly (A/72/186), then introduces the theme, "Indigenous peoples and self-governance", in particular as it relates to the achievement of sustainable development. The Special Rapporteur intends to devote a future thematic report to the issue of indigenous governance systems, to identify and promote best practices and provide Member States with relevant recommendations.

II. Activities of the Special Rapporteur in 2017 and 2018

3. As part of her mandate, the Special Rapporteur has engaged in a number of activities, with the aim being (a) to conduct thematic studies; (b) to conduct country visits; (c) to communicate with Governments and other actors on alleged violations of the rights of indigenous peoples; and (d) to promote good practices. Some of the focus areas addressed and activities carried out by the Special Rapporteur during the past year are highlighted below.

A. Attacks against and criminalization of indigenous peoples

4. In recent years, there has been a worrying escalation in the criminalization and harassment of, and attacks and threats against, indigenous peoples who have been defending their rights to protect their lands, territories and resources. Violations increasingly arise when indigenous leaders and community members voice concerns over extractive and investment projects, such as mining, agribusiness or hydroelectric dams. Such projects are commonly developed without consultations or the free, prior and informed consent of the peoples whose lands, territories and natural resources are affected. Intensified competition over natural resources has placed indigenous communities seeking to protect their traditional lands at the forefront of conflict, as targets of persecution.

5. The Special Rapporteur therefore dedicated her thematic report to the Human Rights Council at its thirty-ninth session (A/HRC/39/17) to an analysis of those concerns, through the optic of indigenous peoples' rights. The report specifically analyses the individual and collective impacts on indigenous peoples and the need to develop collective prevention and protection measures. In order to consult a broad range of actors during the preparation of the report, the Special Rapporteur issued a public call for input on the subject, resulting in over 70 written submissions, and convened consultations in Geneva and New York in March and April 2018.

B. Consultation and free, prior and informed consent

6. The Special Rapporteur continues to receive reports from indigenous peoples with allegations on the violation of their rights to consultation and to free, prior and informed consent. She has also had the opportunity to hear the views of States and the private sector on the need to regulate those rights, for the sake of legal clarity, and has received requests from various actors to provide commentaries and technical advice.

7. Since 2016, the Special Rapporteur has provided input to the Government of Honduras for its process to develop a law on prior consultation, on the basis of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO), including by preparing a commentary on the draft law in 2016 and 2017 and participating in a working visit in 2017 pursuant to an invitation extended by the Government. During her country visit to Guatemala in May 2018, the Special Rapporteur was informed that draft legislation to regulate consultation in accordance with ILO Convention No. 169 had been developed by members of the national Congress. The Constitutional Court of Guatemala had also ordered the Congress to adopt a law on consultation, to be based on consultations with indigenous peoples, by May 2018 at the latest.

8. The commentaries on the Honduras draft law and the report on the mission to Guatemala elaborate on basic principles, on the basis of international standards on the rights of indigenous peoples, which the Special Rapporteur considers are not adequately reflected in the current debates and processes relating to the development of consultation laws in those countries. That also seems to be the case in other countries, such as Colombia and Ecuador, that are considering the development of similar legal instruments.

9. The Special Rapporteur has underlined the obligations of Governments to fully implement ILO Convention No. 169 from the moment it enters into force in the ratifying countries, as also stated by ILO.[1] Furthermore, as in the case of many Latin American countries, human rights treaties to which States are parties are part of a "constitutionality block" that provides them with equal or greater legal status than their national constitutions.

10. The Special Rapporteur has also stressed that the right of indigenous peoples to be consulted is not to be viewed as an isolated right. Quite the contrary, it arises from, and helps to safeguard, the substantive rights of indigenous peoples, especially their rights to self-determination, lands, territories and natural resources. All of those rights have to be jointly considered to adequately comply with the obligations contained in ILO Convention No. 169, as well as the obligations deriving from other human rights standards, such as the United Nations Declaration on the Rights of Indigenous Peoples and the relevant instruments and jurisprudence of regional human rights systems. Those standards underline the importance of ensuring the free, prior and informed consent of indigenous peoples. The Special Rapporteur is extremely concerned that those standards are being ignored in the processes and conceptual frameworks used to develop consultation legislation and that there is an apparent preference for a restrictive interpretation of the Convention.

11. The Special Rapporteur has observed that, in the above-mentioned cases, there has not been adequate participation of indigenous peoples in defining the agreed processes of "consultation on consultation". This affects not only the level of input that indigenous peoples can provide on the content of a draft law but also the very legitimacy of the law itself. Furthermore, in the cases examined, different actors have set timelines for the adoption of legal instruments that were inappropriate to the development of an inclusive and meaningful process.

12. The Special Rapporteur has observed deep divergences on the nature and contents of the rights to consultation and consent among the various actors involved,

[1] At the 282nd meeting of the Governing Body of the International Labour Organization (ILO), held in November 2011, as part of a representation alleging non-observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Single Confederation of Workers of Colombia (GB.282/14/3); see ILO, *Los derechos de los pueblos indígenas y tribales en la práctica: una guía sobre el convenio número 169 de la Organización Internacional del Trabajo* (2009), p. 66.

notably between States and indigenous peoples, and on appropriate ways to operationalize those rights. In many cases, such divergences occur in national contexts where severe conflicts and violence have occurred in the context of projects that have been undertaken without good-faith consultations or the free, prior and informed consent of the indigenous peoples concerned. This, in turn, generates a lack of trust by indigenous peoples towards legal and other initiatives promoted by Governments in the area of consultation.

13. In the view of the Special Rapporteur, measures to build trust must be taken before initiating discussions on a potential consultation law. In this sense, dialogue should be undertaken between indigenous peoples and State actors about the nature and content of the relevant international standards, while taking into account indigenous peoples' views on how to implement them. The underlying concerns of indigenous peoples, notably the need for strengthened respect for and protection of their rights to lands, territories and natural resources, their culture and their development priorities, must also be addressed. The Special Rapporteur is particularly concerned about the manner in which the development and discussion of legal proposals are currently being conducted, as those processes risk becoming new sources of conflict, which would ultimately increase tensions in already violent contexts.

C. Indigenous peoples in isolation and initial contact

14. An issue that requires urgent attention and commitment from the international community is the extremely vulnerable human rights situation of indigenous peoples living in isolation and initial contact. Their critical vulnerability arises from several reasons, including their small populations, health risks due to immunodeficiencies for common illnesses and the challenges they face in defending their human rights on their own.

15. With a view to addressing those concerns, the Special Rapporteur convened a working meeting on international human rights standards on indigenous peoples in voluntary isolation and initial contact in the Amazon and Gran Chaco regions. The meeting, held in Lima on 8 and 9 June 2017, was organized jointly with the Inter-American Commission on Human Rights, the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the non-governmental organization, International Work Group for Indigenous Affairs. The findings and conclusions drawn from the event were outlined in a report submitted to the Human Rights Council at its thirty-ninth session (A/HRC/39/17/Add.1).

16. OHCHR and the Inter-American Commission on Human Rights have issued guidelines and special reports outlining the human rights standards applicable to indigenous peoples in isolation and initial contact.[2] The documents establish important principles for the survival of these peoples, such as the principle of no contact as an expression of their right to self-determination, the intangibility of their territories and the applicability of the precautionary principle, according to which actions that potentially endanger the health, well-being and other human rights of indigenous peoples should be avoided.

[2] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Directrices de Protección para los Pueblos Indígenas en Aislamiento y en Contacto Inicial de la Región Amazónica, el Gran Chaco y la Región Oriental de Paraguay" (Geneva, 2012); and Inter-American Commission on Human Rights, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights* (2013).

17. In spite of those standards and the specific laws and measures adopted in several countries in Latin America directed at protecting indigenous peoples in isolation and initial contact, information received by the mandate holder shows that they still face serious threats to their lives, physical integrity, health, cultures, territories and resources. Those threats mainly arise from the presence and activities of external actors, including illegal miners, loggers and those involved in organized crime, as well as State laws and policies that favour natural resource exploitation and infrastructure development in the territories inhabited and used by indigenous peoples. Of particular concern is the increase in the number of contacts with isolated peoples, notably in Brazil, Ecuador and Peru.

18. The conclusions drawn from the working meeting highlight the need to redouble efforts to improve protection for the territories and environment of indigenous peoples in isolation and initial contact, in line with international standards. States should refrain from implementing actions that affect the lands, territories and resources of indigenous peoples in isolation and initial contact, while improving the existing protection mechanisms and providing those mechanisms with adequate human and financial resources. It is essential to include neighbouring indigenous communities, institutions and organizations in the formulation and implementation of protection measures for these peoples, including land demarcation, health and contingency protocols, early warning systems and conflict prevention measures.

19. There is also a need to develop and adequately implement differentiated policies directed at indigenous peoples in initial contact in the areas of health, land rights and prior consultation and consent regarding measures and activities affecting them. Particular attention must be given to the situation of indigenous women in isolation and initial contact.

20. Along with strengthened measures at the national level, inter-State coordination is also necessary to address the threats faced by indigenous peoples living near borders. Many of the territories, as well as the legal and illegal activities affecting indigenous peoples in isolation and initial contact, are transboundary in nature and require joint coordinated actions by Governments, civil society and indigenous peoples' organizations across borders.

D. Country visits to Mexico and Guatemala

21. Since reporting to the General Assembly in 2017, the Special Rapporteur has conducted two official country visits, to Mexico, from 8 to 17 November 2017 (see A/HRC/39/17/Add.2), and to Guatemala, from 1 to 10 May 2018 (see A/HRC/39/17/Add.3), upon invitation by the two Governments.

22. Mexico has played an important role in supporting the advancement of the indigenous agenda at the international level, including the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. At the national level, the recognition of indigenous peoples' rights to autonomy and self-determination in article 2 of the country's Constitution is a significant advancement, as are initiatives to facilitate their political participation. Nevertheless, more needs to be done to make these initiatives effective and address the root causes of indigenous peoples' marginalization.

23. During the country visit, the Special Rapporteur observed serious patterns of exclusion and discrimination against indigenous peoples. Indigenous peoples are overrepresented among the poor, with 71.9 per cent of the indigenous population living in poverty or extreme poverty, as compared with 40.6 per cent of the non-indigenous population. With regard to education, the picture is similar. In the

light of the 2030 Agenda for Sustainable Development and its commitment to leaving no one behind, much more needs to be done to address these inequalities.

24. Current development policies, which promote "megaprojects" in the extractive, energy, tourism, agribusiness and other sectors, represent a major challenge for indigenous peoples' enjoyment of their human rights. There has been a significant increase in such investment projects, which take place on indigenous peoples' lands and territories without appropriate consultations to obtain their free, prior and informed consent. This has led to land dispossession, negative environmental impacts, social conflict and the criminalization of indigenous community members opposing the projects. Moreover, when attempting to access justice for human rights violations relating to such investment projects, indigenous peoples face profound challenges, including their physical distance from justice administration institutions, language barriers, a lack of adequate legal assistance, fear of reprisals if a complaint is filed and a lack of appropriate protection mechanisms.

25. With regard to Guatemala, the Special Rapporteur also recognized that country's active role in supporting the advancement of indigenous peoples' rights at the international level. The country, however, still faces serious challenges in implementing those commitments at the national level. Although indigenous peoples constitute the majority of the population in Guatemala, they have never participated on an equal footing in the political, social, cultural and economic life of the country. Indigenous peoples continue to face structural racism in their daily lives, as reflected in the lack of protection for their lands, territories and natural resources and in the difficulties they experience in gaining access to education, formal employment, health care, political participation and justice. The levels of inequality are increasing. Around 40 per cent of indigenous peoples still live in extreme poverty, and more than half of all indigenous children are malnourished.

26. The marginalization of indigenous peoples in Guatemala is rooted in historical and structural issues, including impunity, corruption, institutional weakness, inequality and continued patterns of violence and repression. The legacy of the violence and genocide committed during the internal armed conflict from 1960 to 1996 is still being felt today. Despite the 22 years that have passed since the signature of the Peace Agreements of 1996, compliance with the commitments therein has been extremely limited. The overall implementation rate of the Agreement on the Identity and Rights of Indigenous Peoples is only 19 per cent. The failure to implement the Peace Agreements has undermined progress in adopting measures in many areas, including land reform, recognition of indigenous authorities and justice, political participation and bilingual intercultural education. Of particular concern is the lack of legislation or a mechanism for the adjudication of the rights of indigenous peoples to lands, territories and natural resources.

27. The Special Rapporteur is extremely concerned about the resurgence of violence, forced evictions and the criminalization of indigenous peoples who defend their rights to their lands, territories and resources. She was particularly disturbed by the killings of several indigenous leaders during and shortly after her visit to Guatemala.

E. Communications and cooperation with human rights mechanisms, relevant United Nations bodies and regional human rights organizations

28. As part of her mandate, the Special Rapporteur continuously addresses situations of alleged violations of the rights of indigenous peoples, through communications with Governments and other stakeholders. Since the submission of

her last report to the General Assembly, the Special Rapporteur has sent 37 communications to 20 States, as well as to other actors, in relation to alleged violations of a wide range of economic, social and cultural, as well as civil and political rights.[1]

29. Some of those communications have led to fruitful dialogues and immediate action on the rights of indigenous peoples. In January 2018, the European Commission decided to suspend a climate change project in the Embobut forest in Kenya, pending an assessment of human rights compliance, as called for by the Special Rapporteur on the rights of indigenous peoples, together with other Special Rapporteurs. Days before the decision, the Special Rapporteurs had sent urgent appeals to the Government of Kenya and the European Commission relating to forced evictions of and attacks on the indigenous Sengwer peoples in the Embobut forest, in the context of the European Union-funded project.

30. The Special Rapporteur has continued to cooperate with other human rights mechanisms, United Nations bodies and regional human rights organizations relevant to the rights of indigenous peoples. Such cooperation has included her attendance at and active contributions to the annual sessions of the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. In 2018, the Special Rapporteur also attended the high-level political forum on sustainable development, where she contributed to a thematic discussion on leaving no one behind. At the regional level, the Special Rapporteur has increased cooperation with the Inter-American Commission on Human Rights, as discussed above.

III. Indigenous peoples and self-governance

A. Background

31. Long before they were colonized by external forces and before post-colonial nation-States emerged, indigenous peoples all over the world had developed complex ways of governing themselves. A review of the histories of indigenous peoples shows that, prior to colonization, there were existing governance systems establishing rules on the ways indigenous peoples related to each other and their neighbours, as well as with nature and the surrounding ecosystems. The traditional worldviews, values, norms and laws of indigenous peoples, and their concepts of authority and ways of exercising leadership, were embedded in those governance systems.

32. Most colonizers, rulers of settler nation-States and those who built up the nation-States following struggles for independence undermined and denigrated the indigenous governance systems, which were regarded as inferior or backward compared with Western governance systems. They were also seen as threats to the consolidation of the rule and powers of the new regimes. In spite of efforts to eliminate indigenous governance systems, many indigenous peoples continued to assert their rights to define and determine their relationships with the colonial and post-colonial Governments. Today, several of those indigenous governance systems continue to exist and function. The diversity of such systems is a result of the different historical contexts and experiences that indigenous peoples have undergone and the strength and persistence of their struggles for self-determination.

33. In this section, the Special Rapporteur presents a general introduction to the theme of indigenous peoples and self-governance, building upon some of the earlier reports of the mandate holder, as well as on the work of the Expert Mechanism and the Permanent Forum (see, for example, A/HRC/18/42, A/HRC/15/35 and

[1] See the communications reports available at https://spcommreports.ohchr.org/.

E/C.19/2018/7). Participants in a recent international expert group meeting of the Permanent Forum recognized the "need to compile information about indigenous peoples' autonomy and governance systems that could provide valuable information as good practices" (E/C.19/2018/7). The Special Rapporteur decided to engage further with this theme. In the context of the Sustainable Development Goals, it is furthermore important to elaborate on the role that indigenous governance systems could play in ensuring that the implementation of the 2030 Agenda is relevant and culturally appropriate for indigenous peoples, guided by indigenous values and respectful of the rights of indigenous peoples.

B. The international legal framework relating to indigenous peoples and self-governance

34. Indigenous peoples' right to govern themselves is well established in international human rights law and jurisprudence. This section provides a brief overview of the relevant international human rights framework,[4] with an emphasis on some of the key elements relating to self-governance.

35. Indigenous peoples' right to self-governance is closely linked to their right to exercise self-determination, as it allows them to be in control of their own destiny and self-determined development. Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, provides for the right to self-determination. It is considered a foundational right of indigenous peoples, because it affirms their right to freely determine their political status and freely pursue their economic, social and cultural development.[5] Self-determination for indigenous peoples is also a matter of cultural self-determination, which has been described as the right to recapture their identity, reinvigorate their ways of life, reconnect with the Earth, regain their traditional lands, protect their heritage, revitalize their languages and manifest their culture, all of which are considered "as important to indigenous people as the right to make final decisions in their internal political, judicial, and economic settings".[6]

36. The right to self-determination is a fundamental principle in international law, enshrined in Article 1 (2) of the Charter of the United Nations and common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, albeit to a lesser extent, have invoked article 1 of the Covenants in cases relating to indigenous peoples, mainly in the context of indigenous land rights, economic rights and the right to take part in cultural life.[7]

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[4] See A/HRC/15/35 for a thorough overview of the international human rights framework relating to the self-governance and participation of indigenous peoples.

[5] Anaya, S. James, *Indigenous Peoples in International Law*, 2nd ed. (Oxford University Press, 2004); and Åhrén, Mattias, *Indigenous Peoples' Status in the International Legal System* (Oxford University Press, 2016).

[6] Wiessner, Siegfried, "Indigenous sovereignty: a reassessment in light of the United Nations Declaration on the Rights of Indigenous Peoples", *Vanderbilt Journal of Transnational Law*, vol. 41 (2008), p. 1176.

[7] The Human Rights Committee, for instance, found that Australia had not sufficiently protected indigenous self-determination and needed to take steps to "secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources" (A/55/40 (Vol. I), paras. 506–507). The Committee on Economic, Social and Cultural Rights found an infringement of article 1 in the case of an economic land concession in a protected forest area in Cambodia, causing environmental degradation and displacement of indigenous peoples (E/C.12/KHM/CO/1, para. 15). For further examples, see Saul, Ben, *Indigenous Peoples and*

37. The Declaration includes several articles relating to the right to self-government. Article 4 establishes the right to autonomy or self-government in matters relating to the internal and local affairs of indigenous peoples, as well as ways and means for financing their autonomous functions, while articles 5, 18, 20 and 34 establish the right to maintain, strengthen and develop indigenous decision-making institutions and legal, economic, cultural and social systems. Thematic articles throughout the Declaration expand upon the rights of indigenous peoples to maintain their own decision-making and governance systems relating to education (article 14), health (article 24), culture and language (articles 11, 13, 15 and 31), justice systems (articles 34 and 40), political participation (articles 18 and 19), economic development (articles 20, 21 and 23) and lands, territories and resources (articles 25 to 28, 30 and 32).

38. In addition to the recognition provided by the Declaration, the social, cultural, religious and spiritual values and practices of indigenous peoples and their aspirations to "exercise control over their own institutions, ways of life and economic development" are recognized in ILO Convention No. 169. The Convention contains a number of key provisions on the rights to participation and consultation, through appropriate procedures and, in particular, indigenous representative institutions (articles 6, 7 and 15).

39. The rights of indigenous peoples to self-government and participation in decision-making is furthermore recognized in other human rights instruments and through the jurisprudence of human rights treaty bodies. The right to public participation is established in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and elaborated on in general recommendation No. 23 (1997) on the rights of indigenous peoples of the Committee on the Elimination of Racial Discrimination, in which States parties are urged to ensure the effective participation of indigenous peoples in decisions that may affect them. Other relevant provisions are found in the International Covenant on Civil and Political Rights (article 1, on self-determination, article 25, on participation in public affairs, and article 27, on community rights to culture, religion and language), the International Covenant on Economic, Social and Cultural Rights (article 1, on self-determination, and article 15, on cultural rights), the Convention on the Elimination of All Forms of Discrimination against Women (articles 7 and 8, on the participation of women) and the Convention on the Rights of the Child (article 12, on children's rights to participate in decision-making, and article 30, on the rights of the indigenous child).[8]

40. Some important standards, affirmed in both the Declaration and other human rights instruments and jurisprudence, are outlined below.

Recognition of indigenous institutions and the right to participation in public affairs of the State

41. Indigenous peoples have both the right to maintain their own indigenous decision-making institutions and the right to participate in decision-making processes of the State and of other actors, in particular on matters that affect them. Both dimensions are crucial to the exercise of self-governance in practice. This duality is reflected in several articles of the Declaration, including article 5, whereunder indigenous peoples "have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life

Human Rights: International and Regional Jurisprudence, (Bloomsbury Publishing, 2016), pp. 54 and 86.

[8] Saul (2016), chap. 2.

of the State". Along the same lines, article 18 provides for the right of indigenous peoples "to participate in decision-making in matters, which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions".

42. Articles 20 and 34 of the Declaration in particular expand upon the rights of indigenous peoples to maintain and develop their own political, economic and social systems or institutions and to promote their distinctive customs, spirituality, traditions, procedures, practices and, in where they exist, juridical systems or customs, in accordance with international human rights standards.

43. In terms of participation in State decision-making, under article 19, States should consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. The Human Rights Committee has also highlighted that members of indigenous communities should have the opportunity to participate in decision-making processes in relation to measures that substantially interfere with their culturally significant economic activities. The Committee furthermore emphasized that indigenous peoples' right to participate extended beyond consultation, noting that participation in the decision-making process must be effective, which required "not mere consultation, but the free, prior and informed consent of the members of the community".[9]

Internal and local affairs

44. In article 4 of the Declaration, reference is made to self-government in relation to "internal and local affairs". While specific sectors of self-governance depend on the context, the expression "internal and local" is typically read as excluding areas such as foreign policy, military and security of the sovereign State.[10] Given the inherent connection of indigenous peoples to their lands, territories and resources, self-governance typically has a territorial base and relates to decision-making within a certain territory.[11] The thematic articles of the Declaration relating to education, health, cultures and languages, justice, economic development and the management of lands, territories and resources (see para. 37 above) address the role of indigenous institutions thereby shedding further light on what may be regarded as "internal and local affairs".

Ways and means of financing

45. The issue of financing indigenous governance systems and their delivery of services is essential to the practice of self-government. The right to self-government "in ways and means for financing their autonomous function" is highlighted in article 4 of the Declaration, reflecting the necessity of adequate funding for self-government to be effective. The capacities of indigenous peoples to finance their autonomous governments depend on the adequacy of the financial support provided by the State and the extent to which they are able to freely pursue their economic development. Similarly, ILO Convention No. 169 contains the affirmation that Governments should establish the means for the full development of indigenous peoples' own institutions

[9] *Poma vs. Peru* (CCPR/C/95/D/1457/2006, para. 7.6).

[10] International Law Association, *The Hague Conference (2010): Rights of indigenous peoples — Interim Report* (2010), p. 13; and Daes, Erica-Irene A., "The concepts of self-determination and autonomy of indigenous peoples in the draft United Nations Declaration on the Rights of Indigenous Peoples", *St. Thomas Law Review, vol. 14 (2001)*, p. 267.

[11] International Law Association (2010), p. 13.

and initiatives, although the only requirement is that Governments provide resources necessary for that purpose "in appropriate cases" (article 6).

The collective dimension

46. The right of indigenous peoples to govern themselves, which is based on their right to self-determination, is a collective right. This is established in the United Nations Declaration, which clarifies and elaborates on the collective rights of indigenous peoples.

47. The American Declaration on the Rights of Indigenous Peoples, adopted in 2016, also addresses the collective dimension of indigenous peoples' rights to self-governance in its article VI, in which it was recognized that indigenous peoples have collective rights that are indispensable for their existence, well-being and integral development as peoples, and, more specifically, that States should "recognize and respect the right of indigenous peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources".

48. In the African Charter on Human and Peoples' Rights of 1981, specific reference is made to the rights of individuals and the rights of peoples. It provides for the right of all citizens to participate freely in the Government of the country (article 13), and the collective right of a people to freely dispose of their wealth and natural resources (article 21). The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights have interpreted several provisions of the African Charter in accordance with international standards regarding the collective rights of indigenous peoples.

Free, prior and informed consent

49. The rights to consultation and to free, prior and informed consent, as discussed above, are indispensable for the ability to govern themselves in practice. They are essential, in particular as the external decisions of the State and non-State actors increasingly affect indigenous territories, societies, governance systems and, hence, all matters relating to the internal and local affairs of indigenous peoples.

C. Self-governance and the 2030 Agenda for Sustainable Development

50. As the development framework that will guide global development for the coming decade, the 2030 Agenda for Sustainable Development is highly relevant to the development processes that indigenous peoples will take part in and be affected by. Indigenous governance systems can play an essential role in ensuring that the implementation of the 2030 Agenda is culturally appropriate and grounded in indigenous peoples' traditions, values and development approaches. The economic, social, environmental and cultural well-being of indigenous peoples will stand a greater chance of being achieved if real decision-making is carried out by them and through their own governance systems, which promote their own cultural values and norms.

51. As has already been noted by the Special Rapporteur, in order not to leave indigenous peoples behind, the 2030 Agenda should, on the one hand, effectively address discrimination against indigenous peoples so that they can fully benefit from mainstream development efforts, while, on the other hand, ensuring respect for their right to define and pursue their self-determined development paths (see A/69/267). Given their unique ways of life, traditions, cultures and holistic development

approaches, development for indigenous peoples might not take the same form as mainstream development processes.

52. The dual aim of overcoming discrimination and ensuring self-determined development can be achieved only by guaranteeing the involvement of indigenous peoples themselves in the implementation of the Sustainable Development Goals. Evidence is emerging that development programmes that maximize indigenous peoples' ability to participate in decision-making and implementation perform better than those controlled by external actors. Studies by the Harvard Project on American Indian Economic Development showcase numerous examples of successful indigenous-run development programmes that consistently outperform those of external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care and social service provision. This has also been demonstrated in the context of conservation (see A/71/229) and in other cases, as evidenced by the concrete examples outlined below.

53. The 2030 Agenda is a framework grounded in human rights,[12] and direct references are made therein to indigenous peoples, including in the Goals that relate to ending hunger through sustainable agriculture (Goal 2) and ensuring equal access to education (Goal 4). Nevertheless, prior to the adoption of the Agenda, indigenous peoples had advocated for even stronger recognition of their rights, including their right to self-governance and self-determination, as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples. In addition, they had called for stronger recognition of the cultural and collective dimensions of indigenous peoples' rights (see A/69/267).[13]

54. Although there are no direct references to self-governance in the 2030 Agenda, there are some entry points relating to the participation of indigenous peoples. Under the Agenda, States committed themselves to empowering and engaging indigenous peoples in its implementation and in the review of progress in achieving its Goals (see General Assembly resolution 70/1, paras. 23, 25, 52 and 79). The principles guiding the follow-up and review processes are based on participation and accountability and should be open, inclusive, participatory and transparent, as well as people-centred and gender sensitive, with respect for human rights and with a particular focus on the poorest and most vulnerable (ibid., para. 74). At the national level, States were encouraged to conduct regular and inclusive reviews of progress, in which the contributions of indigenous peoples were welcomed (ibid., para. 79). Since the adoption of the 2030 Agenda in 2015, States have annually reconfirmed their commitments to ensuring that indigenous peoples participate in, contribute to and benefit without discrimination from the implementation of the Agenda and to giving due consideration to all the rights of indigenous peoples while implementing it (resolutions 70/232, 71/178 and 72/155).

55. Furthermore, Goal 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Targets 16.6, on developing effective, accountable and transparent institutions, and 16.7, on ensuring responsive, inclusive, participatory and representative decision-making, at all levels, are relevant to indigenous peoples' right to self-governance and participation.

[12] Of the 169 targets of the 2030 Agenda, 92 per cent are linked to human rights and 73 targets have significant links to the provisions outlined in the United Nations Declaration on the Rights of Indigenous Peoples (Danish Institute for Human Rights, The Human Rights Guide to the Sustainable Development Goals database. Available at http://sdg.humanrights.dk).

[13] See also OHCHR and the Secretariat of the Permanent Forum on Indigenous Issues, "Indigenous peoples' rights and the 2030 Agenda", briefing note (September 2017).

56. Indigenous peoples have been participating actively in the processes that led to the development of the 2030 Agenda and in the review of its first years of implementation, including in the development of national implementation frameworks and global review processes through the high-level political forum (see E/C.19/2018/2). This participation is led by the indigenous peoples major group, created pursuant to the adoption of Agenda 21: Programme of Action for Sustainable Development at the United Nations Conference on Environment and Development of 1992. In chapter 26 of Agenda 21, indigenous peoples were recognized as one of the major groups that would play a vital role in achieving sustainable development. The group advocated strongly with other major groups and some States to ensure that the 2030 Agenda would be grounded in human rights.

57. Indigenous peoples undertake their own monitoring of Sustainable Development Goal implementation at the national and local levels, and of the State reports at the high-level political forum, in particular under the voluntary national review process. Indigenous peoples have proposed ways of using human rights as the lens through which to establish indicators that would measure progress in reaching the Goals.

58. The Special Rapporteur is of the view that part of the monitoring and review process should look into how indigenous governance and decision-making processes are strengthened so as to play a role in the achievement of the Goals, both for indigenous peoples and more broadly. For example, in terms of achieving the Goals under review in 2018,[14] the role and robustness of indigenous governance systems will be of great importance.

59. Indigenous peoples' traditional knowledge and practices relating to land and resource management, as well as their customary laws on land and resource use, access, control and ownership, have a direct link to Goal 15, on life on land, including with regard to the protection and restoration of terrestrial ecosystems and the promotion of their sustainable use, sustainably managing forests, combating desertification and reversing land degradation and biodiversity loss. There is increasing evidence of the overlap between the territories and areas of indigenous peoples and high levels of biodiversity and healthy forests (A/71/229).[15] While indigenous peoples occupy 22 per cent of the world's landmass, 80 per cent of the world's biodiversity is found in their lands and territories. A key factor explaining this overlap is in indigenous peoples' governance systems and customary laws, which define their relationships to their lands, territories and resources. Maintaining collective ownership and management of their lands and resources is one element of those customary laws.

60. Goal 12, on ensuring sustainable consumption and production patterns, is also linked to indigenous governance. A cursory analysis of indigenous cultural norms and values reveals the centrality of the values of reciprocity and solidarity to those cultures, especially with regard to the relationship between indigenous peoples and nature or Mother Earth and with the rest of humanity. Those values are reflected in customary laws, which determine the rules for accessing non-timber products from forests (Brazil nuts, rattan, mushrooms, etc.), as well as the methods, other than cash crops and animal husbandry, used in the production of food brought to the market. In some indigenous communities, the use of genetically modified organisms, toxic pesticides and agrochemicals has been regulated by traditional authorities, and campaigns have been launched on the adverse environmental and social impacts of these technologies. Indigenous livelihoods such as reindeer herding, pastoralism,

[14] The Goals under review in 2018 are Goals 6 (clean water and sanitation), 7 (affordable and clean energy), 11 (sustainable cities and communities), 12 (responsible consumption and production), 15 (life on land) and 17 (means of implementation and global partnerships).

[15] See also the World Resources Institute and the Rights and Resources Initiative.

fishing and shifting cultivation, among others, are discussed by the indigenous decision-making bodies, which establish rules to avoid overfishing and for the management of grazing lands. Food security remains a key issue tackled by many indigenous governance systems because of the impacts of climate change, especially floods, droughts, hurricanes and desertification (see A/HRC/36/46).

51. The work of the Special Rapporteur can provide useful guidance to States and indigenous peoples when moving forward in the implementation of the 2030 Agenda nationally. An initial analysis of country reports of the mandate holder since 2005 indicates that 76 per cent of recommendations made in the reports had a direct link and relevance to the content of one of the 169 targets of the Sustainable Development Goals.[16] A similar trend was visible when recommendations relating to indigenous peoples were assessed in the second cycle of the universal periodic review, where 68 per cent of the recommendations had a link to the Sustainable Development Goals.[17]

62. Looking further at the 580 recommendations contained in country reports issued by the mandate holder since 2005 that could be linked to one or more of the Sustainable Development Goals, a clear pattern emerged, showing that the strongest links were to target 16.7, on responsible, inclusive and participatory decision-making. In total, 33 per cent of all linked recommendations were related to that target. The analysis also emphasized the importance of indigenous peoples' rights to their lands, territories and resources, with 29 per cent of linked recommendations relating to target 1.4, on equal rights to ownership, basic services, technology and economic resources, and 26 per cent to target 2.3, on secure land rights, as shown in the figure below.[18]

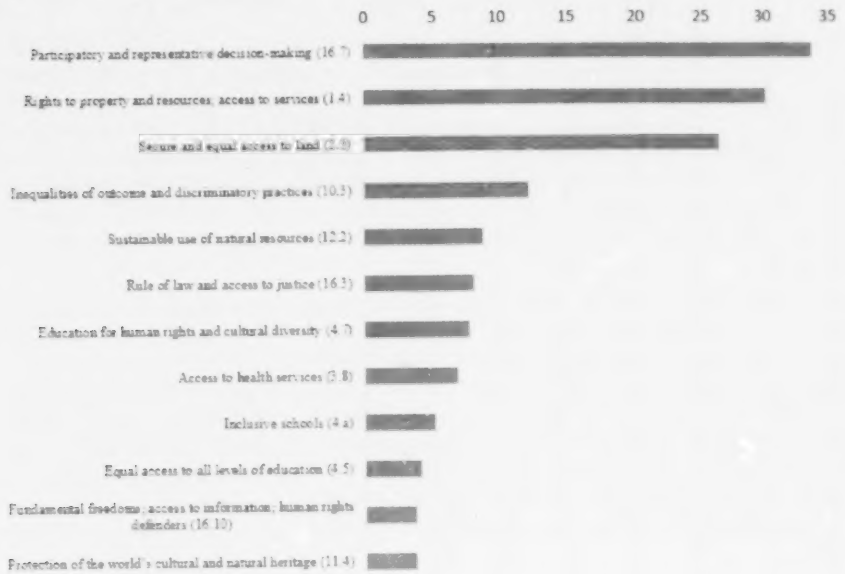
[16] Based on an initial analysis of 764 recommendations from country reports issued by the mandate holder since 2005. One recommendation may be linked to more than one Sustainable Development Goal. A total of 580 out of 764 recommendations were linked to one or more targets. The analysis was conducted in cooperation with the Danish Institute for Human Rights.

[17] For more information, see http://upr.humanrights.dk.

[18] Analysis prepared in cooperation with the Danish Institute for Human Rights.

Sustainable Development Goal targets with the highest percentage of links to recommendations of Special Rapporteurs on the rights of indigenous peoples since 2005

(Percentage of total linked recommendations)


0
5
10
15
20
25
30
35
Participatory and representative decision-making (16.7)
Rights to property and resources; access to services (1.4)
Secure and equal access to land (2.3)
Inequalities of outcome and discriminatory practices (10.3)
Sustainable use of natural resources (12.2)
Rule of law and access to justice (16.3)
Education for human rights and cultural diversity (4.7)
Access to health services (3.8)
Inclusive schools (4.a)
Equal access to all levels of education (4.5)
Fundamental freedoms; access to information; human rights defenders (16.10)
Protection of the world's cultural and natural heritage (11.4)

Note: The percentage shares are provided in relation to the sum of all recommendations of Special Rapporteurs on the rights of indigenous peoples in their country reports since 2005 that have been linked to at least one of the 169 Sustainable Development Goal targets. A recommendation may be linked to more than one target and hence show up several times in the analysis.

63. The percentages indicate the importance of self-governance and participation of indigenous peoples, in particular with regard to their rights to lands, territories and resources. Indigenous governance systems can play a crucial role in guiding and deciding how local implementation of the 2030 Agenda should be carried out.

64. Strengthening indigenous peoples' own strategies for sustainable development is not only key to achieving the fulfilment of their economic, social and cultural rights, but can also play an indispensable role in overall global efforts to achieve sustainable development and adapt to climate change. As mentioned above, much of the world's biologically diverse areas are contained within the traditional lands and territories of indigenous peoples. Moreover, the wealth of their traditional knowledge and practices relating to sustainable agriculture, seed diversity, ecosystem management, biodiversity conservation and climate adaptation, among other concerns, may be beneficial for the global community as a whole (see A/HRC/36/46 and A/71/229).

D. Examples of indigenous governance systems and their contributions to sustainable development at the national level

65. This section presents examples of self-governance by indigenous peoples to illustrate the broad diversity of existing indigenous governance systems, institutions

and arrangements and give some initial insight on how they can contribute to sustainable development.

66. While no example is a perfect case of indigenous self-governance, as understood above, those outlined below can be regarded as steps towards increasing indigenous peoples' control over their destinies and development processes. The examples are primarily based on information from previous country visit reports and research by the mandate holder, as well as on submissions received in the preparation of the present report. The aim is to continue the conversation on the topic together with indigenous peoples and State Governments, to further document existing practices of self-governance and provide recommendations in this regard.

67. Most indigenous governance systems are traditional institutions that have existed in indigenous communities over centuries and still guide decision-making, conflict resolution and interaction between members of the indigenous community as well as externally. In many cases, these institutions include customary and written laws and dispute resolution and adjudicative mechanisms.[19] Some are recognized by the State, while others are not. In recent decades, many contemporary forms of such institutions, including indigenous parliaments, councils and organizations, have also been developed, often in cooperation with States, with a view to addressing indigenous peoples' call for self-determination and control over their own internal and local affairs. Hybrid models aimed at combining traditional and contemporary forms of indigenous governance exist as well.

68. There are vast differences among these systems and practices of self-governance, in terms of their histories, institutional structures, areas of jurisdiction, legal grounding, cooperation with the State and the concrete experiences and challenges they have faced (see A/72/186). As a result of indigenous peoples' intrinsic relationship to their lands, resources and territories, many of their governance systems have a territorial base. There are also cases in which indigenous peoples have increased control and participation in governance in a specific sector, such as culture, language, health or education.[20]

69. Related to self-governance is the issue of adequate and meaningful participation of indigenous peoples in broader public affairs, if they so choose. Not neglecting the long struggle that indigenous peoples had to fight to obtain full citizenship rights, most indigenous peoples today hold the formal right to vote and participate in electoral politics. That being said, multiple obstacles remain for indigenous peoples in terms of efficient access to that right, owing to continued structural marginalization and a lack of recognition and official registration, among other barriers. Moreover, individual electoral rights are not enough to ensure self-governance by indigenous peoples. Specific venues are needed for their collective participation, through their own institutions, in the State's affairs and in its decision-making bodies. As for State practice, it is not uncommon to have seats reserved for indigenous peoples' representatives in national parliaments. Furthermore, several States have established national institutions devoted to indigenous peoples, including special departments within different ministries, parliamentary commissions on indigenous issues, specialized public prosecutor's offices or joint bodies such as dialogue tables (A/72/186). Provided such institutions ensure participation by indigenous peoples in decision-making through their own representatives, as set out in article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, they can play an important role in advancing dialogue between indigenous peoples and States.

[19] Anaya (2004), p. 153.

[20] Åhrén (2016), p. 142.

70. Previous country reports by the Special Rapporteur and her predecessors have outlined several examples of how different indigenous governance systems efficiently manage a broad range of public services, often more effectively than external actors, given the profound understanding that indigenous peoples have of their own cultures, traditions and values.

71. A 2011 assessment by the federal Government of Canada of the achievements and problems of its self-government policy concluded that self-governing indigenous nations enjoyed improved outcomes in educational achievement and employment levels.[21] The inherent right of self-government is regarded as an existing aboriginal right under section 35 of the Constitution Act of 1982. The exact self-government provisions are negotiated in modern treaties or land claim agreements between the federal Government, the provincial governments and the First Nations, Inuit or Métis peoples concerned, and their jurisdictions typically cover areas such as social and economic development, lands and resources, generation of revenues and authority in treaty settlement processes. It should be noted, however, that the majority of First Nations have not yet concluded negotiations on treaties or land claim agreements and therefore, in practice, have limited rights to self-governance (see A/HRC/27/52/Add.2).

72. Indigenous governance can also contribute to improved economic development outcomes. In the energy sector, the entrepreneurial efforts of a number of tribes across Alaska, Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas and Utah in the United States of America have led to the establishment of indigenous energy enterprises to take advantage of the rich oil and gas deposits, great wind and solar potential, and hydroelectric and geothermal resources on their lands. The Picuris Pueblo, a federally recognized tribe in New Mexico, has engaged in a collaborative venture with intertribal authorities and the federal Government to build a 1 MW solar panel, which will make it the first 100-per-cent-solar-powered tribe in the United States, saving the tribe almost $6.5 million over the project's 25-year lifespan. The Oceti Sakowin Power Authority, a cooperative venture of seven Sioux tribes in the Great Plains, is becoming one of the largest wind power development projects, with a production capacity of up to 2 GW, through which the tribes aim to increase access to electricity and funding for infrastructure projects. These self-governed enterprises demonstrate best practices in terms of income generation to support critical government programmes, while also reconciling the protection of lands, waters and sacred places with the benefits of revenue and jobs. They also demonstrate how tribes, by exercising political sovereignty, can approach energy resource development to support economic sovereignty (see A/HRC/36/46/Add.1).

73. There are several good examples of indigenous peoples' contribution to conservation. The Australian government-funded indigenous rangers' programme, for instance, supports indigenous peoples' connection to their lands, encourages cultural knowledge transfer, provides skilled employment and simultaneously contributes to conservation. The creation and joint management of protected areas allow traditional owners to continue to enjoy their customary practices, while simultaneously providing conservation and direct employment opportunities for indigenous peoples (see A/HRC/36/46/Add.2).

74. Indigenous institutions also play an important role in ensuring conflict prevention, order and dispute resolution. Since 1995, the community police force in Guerrero, Mexico, has carried out security, justice and reintegration tasks in accordance with indigenous customs and practices, which has clearly reduced violence and impunity. The State of Guerrero legally recognized the existing community police force in 2011, although there seem to be legislative initiatives to

[21] Indian and Northern Affairs Canada, *Evaluation of the Federal Government's Implementation of Self-Government and Self-Government Arrangements* (2011).

ignore indigenous normative systems and serious concerns relating to the criminal prosecution of members of the community police force (see A/HRC/39/17/Add.2).

75. In Malaysia, the Federal Constitution incorporates special provisions for the natives of Sabah and Sarawak, including recognition of native customary law (see A/72/186). The jurisdiction of the native courts includes breach of customary law and customs, if all parties are natives, including in cases relating to marriage, divorce, adoption, guardianship or custody of infants and others.[22] While the recognition of the native courts is an important step towards respecting indigenous peoples' right to self-government, the courts face challenges in terms of ensuring adequate funding to operate, continued skill training for staff and documentation of cases and legal practice.

76. In Brazil, several indigenous peoples have established their own consultation protocols, such as the consultation and free, prior and informed consent procedures developed by the Wajãpi in Amapá and by the Munduruku in Pará. Others have progressed in terms of self-protection of territories, for example, through the use of indigenous forest guards set up by the Ka'apor in Maranhão. These are expressions of how indigenous peoples have sought to assert control over their territories, in particular to prevent illegal encroachments. However, while the country's Constitution of 1988 does contain several progressive provisions for indigenous peoples, including that they should have their "social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy", more needs to be done by the State to support and cooperate with such indigenous-led initiatives (see A/HRC/33/42/Add.1).

77. In Peru, under article 89 of the Constitution of 1993, the legal personality of peasant and native communities is recognized and their autonomy guaranteed with regard to their organization, community work, the use and free disposal of their land and economic and administrative matters (see A/HRC/27/52/Add.3). Some indigenous peoples have initiated processes of establishing autonomous indigenous governments related to their territories. These include the Wampis people who, in 2015, after years of internal consultation processes, adopted the Statute of the Autonomous Territorial Government of the Wampis Nation with the aim of protecting and promoting their cultural traditions and the Peruvian Amazon. In the Statute, they recognize the territorial boundaries of Peru and confirm that the men and women of the Wampis Nation are also Peruvian citizens with the same rights and duties. The people of the Wampis Nation involve State administration authorities and seek collaboration on various issues. For instance, the Wampis Nation has coordinated intensively with various government institutions, including the Ministry of Energy and Mines, to address illegal mining, which has enabled a more effective response and ongoing monitoring of illegal mining activities (see E/C.19/2018/7).

78. In Namibia, the Traditional Authorities Act allows a traditional community to apply for State recognition of its traditional leadership. Most of the major San groups in Namibia have had their traditional authorities recognized, together with the right of traditional authorities to administer and execute customary laws, to protect and promote "the culture, language, tradition, and traditional values" of their communities and to preserve cultural sites, works of art and traditional ceremonies. Recognized traditional authorities receive funding from the Government to carry out their

[22] Limbu, Shankar, "A glimpse of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples focusing on free, prior and informed consent in Asia", paper presented at the international expert group meeting on the theme, 'Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: the role of the Permanent Forum on Indigenous Issues and other indigenous specific mechanisms (article 42)', New York, 25–27 January 2017.

functions in line with their own cultures. In practice, however, the traditional authorities face challenges in terms of administering their communities effectively, given their small numbers relative to other groups and given that San authorities do not have the power to administer communal lands (see A/HRC/24/41/Add.1).

79. There are also several examples illustrating how increasing indigenous peoples' ability to govern themselves and participate in governance has furthered cooperation and dialogue between indigenous peoples and the State.

80. Since 2009, Greenland's self-rule government and parliament have held authority over all matters internal to Greenland, while the Danish authorities still control defence and foreign policy, among other areas (see A/72/186). The present model of self-rule, which was adopted by the Danish Parliament and 75 per cent of the population of Greenland in a referendum, is a result of a process initiated in the 1970s by Greenlanders towards increasing self-governance. While Home Rule was achieved in 1979 with the establishment of a local parliament and a public government with authority in most political, social and economic matters internal to Greenland, the desire for further control of subsurface resources and the quest to be recognized as a people according to international law led to new negotiations between Greenland and Denmark and, finally, to the establishment of the present self-rule model. The process is regarded as unique, as it was initiated by Greenlanders themselves and negotiated peacefully with the Government of Denmark.[23]

81. In New Zealand, the Maori have had guaranteed representation in Parliament since 1867 through various electoral arrangements, although mostly by setting aside separate seats in the Parliament for Maori. The Electoral Act of 1993 makes the number of reserved seats for Maori proportional to the number of Maori registered on the Maori electoral roll. This representation arrangement has provided the Maori with an important opportunity to participate in and influence national decision-making on a range of issues. Furthermore, it has facilitated dialogue and the partnership between the Government and the Maori, which has been interpreted as having been established by the Treaty of Waitangi. Despite various initiatives and the explicit goals of the local government act to facilitate Maori participation, the representation of Maori in local government has been more difficult to achieve (see A/HRC/18/35/Add.4).

82. The Sami parliaments are representative bodies that were established in Norway, Sweden and Finland in 1989, 1992 and 1995, respectively, to facilitate consultation with the Sami people on matters affecting them, among other objectives.[24] The models of the national Sami parliaments vary across the three countries, as regulated by national legislation in the form of a Sami parliament act and the constitutions of each country, in which the Sami people and their autonomy are recognized, albeit in different ways — and some only after recent amendments. Despite the recognition of Sami parliaments as representative bodies of the Sami people and their ability to represent indigenous peoples on matters affecting them, the Special Rapporteur and her predecessor have raised concerns several times about the limited decision-making power of the parliaments and the challenges they face, given their dual function as a State administrative agency and a popularly elected body representing the Sami people (see A/HRC/18/35/Add.2 and A/HRC/33/42/Add.3).

83. In the Congo, Act No. 5-2011 on the Promotion and Protection of the Rights of Indigenous Populations includes a range of provisions that promote the rights of indigenous peoples to culturally appropriate development within the sectors of health, education, work, culture and lands and territories. The Act moreover provides for

[23] Submission received in 2018 from an expert of the Permanent Forum on Indigenous Issues.

[24] In addition to the Sami in Norway, Sweden and Finland, there are about 2,000 Sami living in the Russian Federation, where they are represented through non-governmental organizations.

consultations regarding measures that affect indigenous lands or resources and before the "consideration, formulation or implementation of any legislative, administrative or development programmes or projects that may affect them", whether directly or indirectly. The Act was developed in a participatory manner, including through consultations with indigenous peoples themselves (see A/HRC/18/35/Add.5).

E. Key areas for future discussions

84. The section above provided a brief review of some examples of steps taken towards strengthening indigenous peoples' right to govern themselves or participate in decision-making. While full indigenous self-governance has yet to be achieved, those steps highlight the potential benefits that can come with increased recognition of that right. Some of the topics that should be assessed and discussed further with regard to indigenous peoples and self-governance are outlined below.

Sustainable development

85. Many of the cases discussed in the present report show the positive outcomes of increasing the ability of indigenous peoples to govern through their own systems and institutions, including how self-governance contributes to the achievement of sustainable development, self-determination, conflict reduction and conservation, among other desirable goals. A thorough analysis of indigenous self-governance could help to further document the achievements, experiences and challenges of indigenous governance systems.

Self-governance on paper and in practice

86. While several indigenous governance systems have been officially recognized, implementation challenges remain in most cases, owing to a lack of full authority to govern, a lack of resources or the inability to fund governance systems or undertake economic activities that would generate the funds needed. The importance of getting indigenous peoples to build their own capacities to govern themselves and to run their own education, economic and health systems is a key factor in ensuring the success of indigenous governance. Indigenous peoples who have succeeded in building such capacities should share their experiences.

Cooperation with the State

87. Of core importance to the success or failure of indigenous governance systems are their recognition by and interaction and cooperation with the State. This relates to the detailed division of work between State and indigenous authorities and to the coordination of joint responsibilities in areas such as social service delivery, justice systems, security and more. Another key concern is the interaction between traditional indigenous governance systems and decentralized institutions of the State. There is an obvious risk that traditional indigenous governance systems fall into disuse when parallel systems of State authority are developed. At the same time, if traditional indigenous governance systems are integrated into the official governance system, but are tasked with implementing policies made by Governments, they may be regarded as non-objective and non-representative of indigenous peoples themselves. Similarly, traditional authorities risk being politicized.

Scope of jurisdiction

88. As evidenced by the examples above, there is great diversity in the areas of jurisdiction that indigenous peoples have been enabled to control, ranging from broad territorial self-governance to participation in the governance of a particular sector,

typically relating to culture, education, languages, justice, health and the like. Further guidance is needed on what the right to self-government and autonomy in "local and internal affairs" entails.

Cultural values and good governance

89. Documenting the unique cultural values that guide indigenous governance systems could provide a better understanding of and respect for how they operate, for instance in terms of obtaining consent and dealing with conflict within indigenous communities. The assessment should also look at internal governance, including with regard to the representation of women and other minority groups in indigenous governance systems.

Pathways to self-governance

90. On the basis of lessons learned from processes in which indigenous peoples and States have worked together to recognize and advance indigenous peoples' right to self-governance, a future study could help to document steps towards increased self-governance. A fundamental first step towards that would be the recognition of indigenous peoples and their own institutions and organizations. Such recognition would include repealing restrictive legislation and reducing bureaucratic registration processes, which often remain a challenge.

Rights to lands, territories and resources and to free, prior and informed consent

91. The right to self-government finds concrete expression in how indigenous peoples are able to truly decide on their own priorities with regard to the use and management of their lands, territories and resources. This includes how they are consulted and how their free, prior and informed consent is obtained when projects and policies affecting their lands, territories and resources are made. This remains an area of key concern for the Special Rapporteur, and more needs to be done to safeguard indigenous peoples' rights to their lands, territories and resources and to ensure adequate consultation and consent, including the facilitation of indigenous participation in defining agreed "consultation on consultation" processes.

Coping with external pressures

92. A better understanding is needed of the impact of external factors, such as land encroachments, economic development projects, climate change and the criminalization of indigenous peoples, on indigenous governance systems.

IV. Concluding remarks

93. **Indigenous governance systems have proven resilient for centuries, representing indigenous peoples and making decisions on their behalf in line with their cultures, values and traditions. They still play an essential role in the lives of millions of indigenous peoples around the world and are crucial factors in ensuring the rights of indigenous peoples, in particular to self-determination and self-identified development.**

94. **Indigenous governance systems have often proven to be better than external actors in providing services to and ensuring the well-being and rights of indigenous peoples. Furthermore, they contribute to conflict reduction, climate adaptation, conservation and protection of nature, culturally appropriate social services, economic progress and many other positive outcomes.**

95. **In the light of the 2030 Agenda, including indigenous peoples, through their own institutions and representatives, in the implementation of the Sustainable Development Goals is essential to ensuring that development initiatives succeed and that indigenous peoples are not left behind. The country visit reports and the previous recommendations of the Special Rapporteur can provide useful guidance to the implementation of the 2030 Agenda for indigenous peoples at the national level, in line with the United Nations Declaration on the Rights of Indigenous Peoples and other human rights instruments.**

96. **In the present report, the Special Rapporteur sought to provide an initial overview of the topic of indigenous peoples and self-governance, which she will take forward through consultations with indigenous peoples and States in order to map different indigenous governance systems and provide key recommendations. States and indigenous peoples are encouraged to participate actively in the discussion, in particular by presenting good practices and solutions for overcoming the remaining challenges relating to indigenous peoples' right to self-government.**